

By:

Robert D. —

S.B. No. 597

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Occupations Code, is amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for the administration of a legal service contract. The term includes a person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

1           (4) "Department" means the Texas Department of  
2 Licensing and Regulation.

3           (5) "Executive director" means the executive director  
4 of the Texas Department of Licensing and Regulation or the  
5 executive director's designee.

6           (6) "Financial security" means a surety bond, a  
7 certificate of deposit, or any other item approved by the executive  
8 director.

9           (7) "Legal service contract" means an agreement:

10               (A) that is entered into for a separately stated  
11 consideration; and

12               (B) under which the company obtains legal  
13 services for a legal service contract holder through a contracting  
14 attorney.

15           (8) "Legal service contract holder" means the person  
16 who purchases or otherwise holds a legal service contract or who is  
17 covered under a group legal service contract.

18           (9) "Person" means an individual or a partnership,  
19 company, corporation, association, or other private group.

20           (10) "Sales representative" means a person who sells  
21 or solicits legal service contracts to a person on behalf of a  
22 company.

23       Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24               (1) a nonprofit legal services corporation under  
25 Chapter 961, Insurance Code;

26               (2) an automobile club supplying services under  
27 Chapter 722, Transportation Code;

1           (3) a prepaid legal services program under Chapter  
2 951;

3           (4) a lawyer referral service under Chapter 952;

4           (5) a retainer contract between an attorney and a  
5 client, and similar contracts made with a group of clients involved  
6 in the same or closely related legal matters; or

7           (6) a contingency fee contract between an attorney and  
8 a client.

9           Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts  
10 of marketing, selling, offering for sale, issuing, making,  
11 proposing to make, and administering a legal service contract that  
12 is regulated by this chapter are exempt from the Insurance Code and  
13 other laws of this state regulating the business of insurance.

14           Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a)  
15 If an insurer who issues prepaid legal service contracts under  
16 Article 5.13-1, Insurance Code, decides to transfer the regulation  
17 of the contracts to the department under this chapter, the insurer  
18 shall notify the commissioner of insurance in writing not later  
19 than the 60th day before the effective date of the transfer. An  
20 insurer that complies with this section is exempt from the  
21 requirements of:

22           (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,  
23 and 21.49-2E, Insurance Code; and

24           (2) Chapter 827, Insurance Code.

25           (b) The exemptions described by Subsection (a) begin on the  
26 date the commissioner receives the notice under Subsection (a) and  
27 apply until the insurer registers with the department as required

1 by Section 953.052.

2 Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a)  
3 The executive director may investigate a company, administrator,  
4 sales representative, or other person as necessary to enforce this  
5 chapter and protect legal service contract holders in this state.

6 (b) On request of the executive director, a company or sales  
7 representative shall make the records relevant to the regulation of  
8 legal service contracts in this state available to the executive  
9 director as necessary to enable the executive director to  
10 reasonably determine compliance with this chapter.

11 (c) After contacting the company that has contracted with  
12 the contracting attorney, the executive director may refer a  
13 complaint received by the department concerning the performance of  
14 a contracting attorney to:

- 15 (1) the State Bar of Texas;  
16 (2) the appropriate licensing agency of another  
17 jurisdiction, if applicable; or  
18 (3) any person designated by law to receive complaints  
19 from the public concerning the performance of an attorney.

20 (d) The executive director may adopt rules as necessary to  
21 implement this chapter.

22 [Sections 953.006-953.050 reserved for expansion]

23 SUBCHAPTER B. REGISTRATION REQUIREMENTS

24 Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not  
25 operate as a company or sales representative of legal service  
26 contracts sold in this state unless the person is registered with  
27 the department. A company's contract may only be sold by a sales

1 representative who is registered with the department.

2 (b) A person who collects commissions for the sale of legal  
3 service contracts but who does not actively sell or solicit legal  
4 service contracts is not required to register under this  
5 subchapter.

6 Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An  
7 applicant for registration must submit an application to the  
8 department. The application must be in the form prescribed by the  
9 executive director.

10 (b) An application for registration as a company must  
11 include evidence satisfactory to the executive director of  
12 compliance with the applicable financial security requirements  
13 prescribed by Subchapter C.

14 (c) An application for registration as a sales  
15 representative must include a list of the companies for which the  
16 sales representative will sell or solicit legal service contracts.

17 Sec. 953.053. FEES. (a) The executive director shall  
18 develop a tiered fee schedule of annual registration fees under  
19 which a company's registration fee is based on the number of legal  
20 service contracts the company sold in this state during the  
21 preceding 12-month period. The executive director shall set the  
22 amounts of the fees required by this subsection to cover the costs  
23 of administering this chapter.

24 (b) In addition to the annual registration fee required by  
25 Subsection (a), the executive director shall collect from each  
26 company a fee equal to 1.7 percent of the annual price of each legal  
27 service contract the company sells in this state. The executive

1 director shall establish a schedule and procedure for collecting  
2 this fee.

3 (c) To be registered, a company must pay the appropriate  
4 fees required by this section.

5 Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL  
6 SERVICE CONTRACTS SOLD. Information concerning the number of legal  
7 service contracts sold by a company that is submitted under Section  
8 953.053 is a trade secret to which Section 552.110, Government  
9 Code, applies.

10 Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES  
11 REPRESENTATIVES. (a) The executive director may deny an  
12 application from a sales representative who:

13 (1) made a material misrepresentation or fraudulent  
14 statement in the application;

15 (2) has had a license revoked under the Insurance  
16 Code;

17 (3) has had a license suspended or revoked under  
18 Section 82.062, Government Code; or

19 (4) fails to pay the fee required under Subsection  
20 (b).

21 (b) Each registered sales representative shall pay an  
22 annual registration fee in the amount set by the executive director  
23 to cover the costs of administering this chapter.

24 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.  
25 The executive director may adopt rules regarding the procedures and  
26 fees a company or sales representative must follow and pay when  
27 requesting a modification to the company's or sales

1 representative's registration information that is on file with the  
2 department.

3 Sec. 953.057. RENEWAL OF REGISTRATION. The executive  
4 director shall adopt rules for the renewal of a company's or sales  
5 representative's registration, including a rule that addresses  
6 late renewals.

7 [Sections 953.058-953.100 reserved for expansion]

8 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE  
9 CONTRACT COMPANIES

10 Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To  
11 ensure the faithful performance of a company's obligations to its  
12 legal service contract holders, each company must deposit and  
13 maintain a form of financial security with the executive director.  
14 The financial security deposited with the director must maintain at  
15 all times the following market values:

16 (1) a company generating \$300,000 or less in annual  
17 gross revenue in this state from the sale of legal service contracts  
18 in the preceding year shall deposit at least \$50,000 with the  
19 executive director;

20 (2) a company generating more than \$300,000 but less  
21 than \$750,000 in annual gross revenue in this state from the sale of  
22 legal service contracts in the preceding year shall deposit at  
23 least \$75,000 with the executive director; and

24 (3) a company generating \$750,000 or more in annual  
25 gross revenue in this state from the sale of legal service contracts  
26 in the preceding year shall deposit at least \$100,000 with the  
27 executive director.

1        (b) For purposes of Subsection (a), if a company that had no  
2 gross revenue in this state from the sale of legal service contracts  
3 in the preceding year previously generated revenue from the sale of  
4 prepaid legal service contracts under Article 5.13-1, Insurance  
5 Code, the company shall deposit an amount of financial security  
6 based on the revenue generated from the sale of prepaid legal  
7 service contracts under the Insurance Code in the preceding year.

8        (c) The department is responsible for the safeguarding of  
9 financial security deposited with the executive director under this  
10 section. Financial security is not subject to taxation and is to be  
11 used exclusively to guarantee the company's performance of its  
12 obligations to its legal service contract holders.

13        (d) The executive director may order an increase in the  
14 amount of financial security required of a company under this  
15 section if the executive director finds that there has been a  
16 substantial change in the company, including an increase in the  
17 amount of fees the company is charging consumers or an increase in  
18 the company's annual gross revenue.

19        (e) Not later than the 30th day after the date the executive  
20 director orders a financial security increase under Subsection (d),  
21 the company may request a hearing on the issue. The executive  
22 director shall hold a hearing not later than the 30th day after the  
23 date a company requests a hearing.

24        (f) Failure of a company to meet the financial security  
25 requirements in this section not later than the 30th day after the  
26 date the executive director issues a final decision in the event of  
27 a hearing or the 30th day after the date the period for submitting a



1 request for a hearing expires constitutes a ground for revocation  
2 of the company's registration.

3 Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

4 (a) If a company's financial security under Section 953.101 is  
5 issued or written for a specified term, not later than the 90th day  
6 before the date the term expires, the company shall:

7 (1) replace the financial security; or

8 (2) notify the executive director of the company's  
9 intention to renew the financial security.

10 (b) If, not later than the 60th day before the date the term  
11 of a company's financial security expires, the executive director  
12 does not receive satisfactory notification of a company's renewal  
13 or replacement of the financial security, the executive director  
14 may draw on the company's financial security to the extent  
15 necessary to ensure that the company's obligations to its legal  
16 service contract holders are met in accordance with this chapter.

17 Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

18 The executive director shall maintain a company's financial  
19 security deposit so long as the company continues to do business in  
20 this state. When a company ceases to do business in this state and  
21 furnishes the executive director with satisfactory proof that the  
22 company has discharged or otherwise adequately met all obligations  
23 to its legal service contract holders in this state, the executive  
24 director shall release the deposited financial security to the  
25 company.

26 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,  
27 on behalf of a legal service contract holder injured because of a

1 company's violation of this chapter, may bring a suit for payment  
2 from the company's financial security deposit held by the executive  
3 director.

4 (b) The state is the only party that may bring suit for  
5 payment from a company's financial security deposit held by the  
6 executive director. This chapter does not create a private right of  
7 action.

8 (c) The state may only seek damages for the cost of the legal  
9 services the company failed to provide to a legal service contract  
10 holder under the terms of the legal service contract.

11 (d) The court shall determine the amount the executive  
12 director shall pay the consumer from the company's financial  
13 security deposit held by the executive director.

14 [Sections 953.105-953.150 reserved for expansion]

15 SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

16 Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not  
17 sell, offer for sale, or issue a legal service contract in this  
18 state unless the company gives the legal service contract holder:

19 (1) a receipt for, or other written evidence of, the  
20 purchase of the contract; and

21 (2) a copy of the legal service contract.

22 (b) A company shall perform the services as stated in the  
23 legal service contract.

24 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may  
25 issue group legal service contracts. The company shall provide a  
26 legal service contract holder who obtains a group contract with a  
27 document that describes the company's services and complies with

1 the requirements of this chapter.

2 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A  
3 contracting attorney must:

4 (1) be licensed in the jurisdiction in which the legal  
5 services are performed;

6 (2) be in good standing with the entity that licenses  
7 attorneys in that jurisdiction; and

8 (3) maintain professional liability and errors and  
9 omissions insurance with minimum annual limits of \$100,000 for each  
10 occurrence and \$300,000 in the aggregate.

11 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES  
12 PROHIBITED. A company may not interfere with the attorney-client  
13 relationship or with the contracting attorney's independent  
14 exercise of professional judgment.

15 Sec. 953.155. COMPANY RECORDS. (a) A company shall  
16 maintain accurate accounts, books, and other records regarding  
17 transactions regulated under this chapter. The company's records  
18 must include:

19 (1) a copy of each unique form of legal service  
20 contract filed with the executive director under Section 953.156;

21 (2) the name and address of each legal service  
22 contract holder;

23 (3) a list of the sales representatives authorized by  
24 the company to market, sell, or offer to sell the company's legal  
25 service contracts;

26 (4) a copy of each contract entered into between the  
27 company and a contracting attorney; and

1           (5) a list of complaints the company has received from  
2 legal service contract holders, including the name of the sales  
3 representative involved in the transaction leading to the  
4 complaint.

5           (b) The records required by this section may be maintained  
6 in an electronic medium or through other recordkeeping technology.  
7 If a record is not in a hard copy, the company must be able to  
8 reformat the record into a legible hard copy at the request of the  
9 executive director.

10           (c) Except as provided by Subsection (d), a company shall  
11 retain the records required by this section until at least the  
12 second anniversary of the termination date of the specified period  
13 of coverage under the legal service contract.

14           (d) A company that discontinues business in this state shall  
15 retain its records until the company furnishes the executive  
16 director with proof satisfactory to the executive director that the  
17 provider has discharged all obligations to legal service contract  
18 holders in this state.

19           Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED  
20 DISCLOSURES. (a) A legal service contract must be filed with the  
21 executive director before it is marketed, sold, offered for sale,  
22 administered, or issued in this state.

23           (b) A legal service contract marketed, sold, offered for  
24 sale, administered, or issued in this state must:

25               (1) be written, printed, or typed in clear,  
26 understandable language that is easy to read;

27               (2) include the name and full address of the company;

1                   (3) include the purchase price of the contract and the  
2 terms under which the contract is sold;

3                   (4) include the terms and restrictions governing  
4 cancellation of the contract by the company or the legal service  
5 contract holder;

6                   (5) identify:

7                   (A) any administrator, if the administrator is  
8 not the company;

9                   (B) the sales representative; and

10                   (C) the name of the legal service contract  
11 holder;

12                   (6) include the amount of any deductible or copayment;

13                   (7) specify the legal services and other benefits to  
14 be provided under the contract, and any limitation, exception, or  
15 exclusion;

16                   (8) specify the legal services, if any, for which the  
17 company will provide reimbursement and the amount of that  
18 reimbursement;

19                   (9) specify any restriction governing the  
20 transferability of the contract or the assignment of benefits;

21                   (10) include the duties of the legal service contract  
22 holder;

23                   (11) include the contact information for the  
24 department, including the department's toll-free number and  
25 electronic mail address, as well as a statement that the department  
26 regulates the company and the company's sales representatives;

27                   (12) explain the method to be used in resolving the

1 legal service contract holder's complaints and grievances;

2 (13) explain how legal services may be obtained under  
3 the legal service contract;

4 (14) include a provision stating that no change in the  
5 contract is valid until the change has been approved by an executive  
6 officer of the company and unless the approval is endorsed or  
7 attached to the contract;

8 (15) include any eligibility and effective date  
9 requirements, including a definition of eligible dependents and the  
10 effective date of their coverage;

11 (16) include the conditions under which coverage will  
12 terminate;

13 (17) explain any subrogation arrangements;

14 (18) contain a payment provision that provides for a  
15 grace period of at least 31 days;

16 (19) include conditions under which contract rates may  
17 be modified; and

18 (20) include any other items required by the executive  
19 director as determined by rule.

20 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A  
21 legal service contract holder may terminate the legal service  
22 contract if the legal service contract holder provides the company  
23 with written notice of the legal service contract holder's  
24 intention of terminating the contract not later than the third day  
25 after the date the legal service contract holder receives the  
26 contract.

27 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a

1 legal service contract holder terminates a legal service contract  
2 in accordance with Section 953.157 and the holder has not sought  
3 legal services under the contract before the contract is  
4 terminated, the contract is void.

5 (b) A legal service contract holder may void the legal  
6 service contract at a later time as provided by the contract.

7 (c) If a legal service contract is voided, the company shall  
8 refund to the legal service contract holder or credit to the account  
9 of the legal service contract holder the full purchase price of the  
10 contract. If the company does not pay the refund or credit the  
11 legal service contract holder's account before the 46th day after  
12 the date the contract is voided, the company is liable to the legal  
13 service contract holder for a penalty each month an amount remains  
14 outstanding. The monthly penalty may not exceed 10 percent of the  
15 amount outstanding.

16 (d) The right to void a legal service contract is not  
17 transferable.

18 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A  
19 company may cancel a legal service contract by mailing a written  
20 notice of cancellation to the legal service contract holder at the  
21 legal service contract holder's last known address according to the  
22 records of the company. The company must mail the notice before the  
23 fifth day preceding the effective date of the cancellation. The  
24 notice must state the effective date of the cancellation and the  
25 reason for the cancellation.

26 (b) The company is not required to provide prior notice of  
27 cancellation if the legal service contract is canceled because of:

- 1           (1) nonpayment of the consideration for the contract;
- 2           (2) a material misrepresentation by the legal service
- 3 contract holder to the company;
- 4           (3) a substantial breach of a duty by the legal service
- 5 contract holder; or
- 6           (4) cancellation of the contract by the legal service
- 7 contract holder.

8           Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company

9 may not use a name that:

- 10           (1) includes "insurance," "casualty," "surety," or
- 11 "mutual" or any other word descriptive of the insurance, casualty,
- 12 or surety business; or
- 13           (2) is deceptively similar to the name or description
- 14 of an insurance or surety corporation or to the name of any other
- 15 company.

16           (b) This section does not apply to a company that, before

17 September 1, 2003, included a word prohibited under this section in

18 its name. A company described by this subsection must include in

19 each legal service contract a statement substantially similar to

20 the following: "This agreement is not an insurance contract."

21           Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,

22 a sales representative, or a representative of a sales

23 representative may not, in the company's contracts or marketing:

- 24           (1) make, permit, or cause to be made any false or
- 25 misleading statement; or
- 26           (2) deliberately omit a material statement if the
- 27 omission would be considered misleading.



1       Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF  
2 ADMINISTRATOR. (a) A company may appoint an administrator or  
3 designate a person to be responsible for:

4           (1) all or any part of the administration or sale of  
5 legal service contracts; and

6           (2) compliance with this chapter.

7       (b) The executive director may adopt rules regarding the  
8 registration of an administrator with the department.

9       [Sections 953.163-953.200 reserved for expansion]

10           SUBCHAPTER E. DISCIPLINARY ACTION

11       Sec. 953.201. DISCIPLINARY ACTION. On a finding that a  
12 ground for disciplinary action exists under this chapter, the  
13 executive director may impose an administrative sanction,  
14 including any administrative penalty, as provided by Chapter 51.

15       Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The  
16 executive director may issue an emergency cease and desist order to  
17 enforce this chapter if the executive director determines that an  
18 emergency exists requiring immediate action to protect the public.

19       (b) The executive director may issue the emergency cease and  
20 desist order without notice and hearing if the executive director  
21 determines that an immediate issuance is necessary under the  
22 circumstances.

23       (c) The executive director shall set the time and place for  
24 a hearing to affirm, modify, or set aside an emergency cease and  
25 desist order that was issued without a hearing.

26       Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
27 executive director may institute an action against a company or

1 sales representative for injunctive relief under Section 51.352 to  
2 restrain a violation or a threatened violation of this chapter or an  
3 order issued or rule adopted under this chapter.

4 (b) In addition to the injunctive relief provided by  
5 Subsection (a), the executive director may institute an action for  
6 a civil penalty as provided by Section 51.352.

7 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,  
8 51.353, and 51.354 apply to a disciplinary action taken under this  
9 chapter.

10 Sec. 953.205. APPEAL. A person affected by a ruling, order,  
11 decision, or other action of the executive director or department  
12 may appeal by filing a petition in a district court in Travis  
13 County.

14 SECTION 2. Article 5.13-1, Insurance Code, is amended by  
15 adding Subsection (h) to read as follows:

16 (h) An insurer may not issue a prepaid legal service  
17 contract under this article after March 1, 2004.

18 SECTION 3. Section 951.003(b), Occupations Code, is amended  
19 to read as follows:

20 (b) A law pertaining to legal service contracts under  
21 Chapter 953 or insurance does not apply to a program under this  
22 chapter.

23 SECTION 4. (a) Chapter 953, Occupations Code, as added by  
24 this Act, applies only to:

25 (1) a legal service contract entered into on or after  
26 March 1, 2004; or

27 (2) a legal service contract entered into before March

1 1, 2004, that meets the requirements of Subsection (c) of this  
2 section.

3 (b) A person regulated under Chapter 953, Occupations Code,  
4 as added by this Act, is not required to comply with that chapter  
5 until March 1, 2004, but may implement the requirements of that  
6 chapter before March 1, 2004. The failure of a legal service  
7 contract company or other person to comply with Chapter 953,  
8 Occupations Code, as added by this Act, or otherwise to administer a  
9 legal service contract plan in the manner required by that chapter  
10 before March 1, 2004, is not admissible in any court, arbitration,  
11 or alternative dispute resolution proceeding and may not otherwise  
12 be used to prove that the action of any person or the affected legal  
13 service contract was unlawful or otherwise improper.

14 (c) The Texas Department of Licensing and Regulation and the  
15 Texas Department of Insurance shall enter into a memorandum of  
16 understanding for a transition plan to transfer the regulation of  
17 legal service contracts from the Texas Department of Insurance to  
18 the Texas Department of Licensing and Regulation. The transition  
19 plan at a minimum shall:

20 (1) allow persons licensed under Chapter 21, Insurance  
21 Code, who have not registered with the Texas Department of  
22 Licensing and Regulation to continue to sell legal service  
23 contracts regulated by the Texas Department of Licensing and  
24 Regulation until March 1, 2004; and

25 (2) allow a prepaid legal service contract issued  
26 subject to Article 5.13-1, Insurance Code, to be maintained by the  
27 legal service contract holder if:

1                   (A) the insurer that issued the contract or a  
2 related entity is registered with the Texas Department of Licensing  
3 and Regulation under Chapter 953, Occupations Code, as added by  
4 this Act, not later than March 1, 2004;

5                   (B) the legal service contract complies with the  
6 requirements established by Chapter 953, Occupations Code, as added  
7 by this Act, for a legal service contract; and

8                   (C) any addition or deletion to the insurance  
9 contract made by a legal service contract company registered with  
10 the Texas Department of Licensing and Regulation is approved by the  
11 company and the approval is endorsed or attached to the contract.

12           SECTION 5. This Act takes effect September 1, 2003.

By: Duncan S.B. No. 597  
(In the Senate - Filed February 19, 2003; February 25, 2003,  
read first time and referred to Committee on State Affairs;  
March 12, 2003, reported adversely, with favorable Committee  
Substitute by the following vote: Yeas 9, Nays 0; March 12, 2003,  
sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 597 By: Duncan

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AN ACT

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(2) "Company" means a person who:  
(A) is contractually obligated to a legal service  
contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting  
attorney to provide or obtain covered legal services for a legal  
service contract holder; and

(C) operates as a for-profit legal service  
contract company.

(3) "Contracting attorney" means an attorney who has  
entered into a contract with a company to provide or obtain covered  
legal services for a legal service contract holder.

(4) "Department" means the Texas Department of  
Licensing and Regulation.

(5) "Executive director" means the executive director  
of the Texas Department of Licensing and Regulation or the  
executive director's designee.

(6) "Financial security" means a surety bond, a  
certificate of deposit, or any other item approved by the executive  
director.

(7) "Legal service contract" means an agreement:  
(A) that is entered into for a separately stated  
consideration; and

(B) under which the company obtains legal  
services for a legal service contract holder through a contracting  
attorney.

(8) "Legal service contract holder" means the person  
who purchases or otherwise holds a legal service contract or who is  
covered under a group legal service contract.

(9) "Person" means an individual or a partnership,  
company, corporation, association, or other private group.

(10) "Sales representative" means a person who sells  
or solicits legal service contracts to a person on behalf of a  
company.

Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

(1) a nonprofit legal services corporation under  
Chapter 961, Insurance Code;

(2) an automobile club supplying services under  
Chapter 722, Transportation Code;

(3) a prepaid legal services program under Chapter  
951;

(4) a lawyer referral service under Chapter 952;  
(5) a retainer contract between an attorney and a

client, and similar contracts made with a group of clients involved in the same or closely related legal matters; or  
 (6) a contingency fee contract between an attorney and a client.

Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS.  
 (a) An insurer who issues or renews prepaid legal service contracts under Article 5.13-1, Insurance Code, shall notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. An insurer that complies with this section is exempt from the requirements of:

(1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D, and 21.49-2E, Insurance Code; and

(2) Chapter 827, Insurance Code.

(b) The exemptions described by Subsection (a) begin on the date the commissioner receives the notice under Subsection (a) and apply until the insurer registers with the department as required by Section 953.052.

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR.

(a) The executive director may investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state.

(b) On request of the executive director, a company or sales representative shall make the records relevant to the regulation of legal service contracts in this state available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

(c) After contacting the company that has contracted with the contracting attorney, the executive director may refer a complaint received by the department concerning the performance of a contracting attorney to:

(1) the State Bar of Texas;

(2) the appropriate licensing agency of another jurisdiction, if applicable; or

(3) any person designated by law to receive complaints from the public concerning the performance of an attorney.

(d) The executive director may adopt rules as necessary to implement this chapter.

[Sections 953.006-953.050 reserved for expansion]

#### SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with the department. A company's contract may only be sold by a sales representative who is registered with the department.

(b) A person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the department. The application must be in the form prescribed by the executive director.

(b) An application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) An application for registration as a sales representative must include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. FEES. (a) The executive director shall develop a tiered fee schedule of annual registration fees under

which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. The executive director shall set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) In addition to the annual registration fee required by Subsection (a), the executive director shall collect from each company a fee equal to 1.7 percent of the annual price of each legal service contract the company sells in this state. The executive director shall establish a schedule and procedure for collecting this fee.

(c) To be registered, a company must pay the appropriate fees required by this section.

Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL SERVICE CONTRACTS SOLD. Information concerning the number of legal service contracts sold by a company that is submitted under Section 953.053 is a trade secret to which Section 552.110, Government Code, applies.

Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES REPRESENTATIVES. (a) The executive director may deny an application from a sales representative who:

(1) made a material misrepresentation or fraudulent statement in the application;

(2) has had a license revoked under the Insurance Code;

(3) has had a license suspended or revoked under Section 82.062, Government Code; or

(4) fails to pay the fee required under Subsection (b).

(b) Each registered sales representative shall pay an annual registration fee in the amount set by the executive director to cover the costs of administering this chapter.

Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION. The executive director may adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Sec. 953.057. RENEWAL OF REGISTRATION. The executive director shall adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals.

[Sections 953.058-953.100 reserved for expansion]  
SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the faithful performance of a company's obligations to its legal service contract holders, each company must deposit and maintain a form of financial security with the executive director. The financial security deposited with the director must maintain at all times the following market values:

(1) a company generating \$300,000 or less in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$50,000 with the executive director;

(2) a company generating more than \$300,000 but less than \$750,000 in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$75,000 with the executive director; and

(3) a company generating \$750,000 or more in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$100,000 with the executive director.

(b) For purposes of Subsection (a), if a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13-1, Insurance Code, the company shall deposit an amount of financial security based on the revenue generated from the sale of prepaid legal

service contracts under the Insurance Code in the preceding year.

(c) The department is responsible for the safeguarding of financial security deposited with the executive director under this section. Financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders.

(d) The executive director may order an increase in the amount of financial security required of a company under this section if the executive director finds that there has been a substantial change in the company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue.

(e) Not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), the company may request a hearing on the issue. The executive director shall hold a hearing not later than the 30th day after the date a company requests a hearing.

(f) Failure of a company to meet the financial security requirements in this section not later than the 30th day after the date the executive director issues a final decision in the event of a hearing or the 30th day after the date the period for submitting a request for a hearing expires constitutes a ground for revocation of the company's registration.

#### Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

(a) If a company's financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, the company shall:

- (1) replace the financial security; or
- (2) notify the executive director of the company's intention to renew the financial security.

(b) If, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security, the executive director may draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter.

#### Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

The executive director shall maintain a company's financial security deposit so long as the company continues to do business in this state. When a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state, the executive director shall release the deposited financial security to the company.

Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state, on behalf of a legal service contract holder injured because of a company's violation of this chapter, may bring a suit for payment from the company's financial security deposit held by the executive director.

(b) The state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. This chapter does not create a private right of action.

(c) The state may only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract.

(d) The court shall determine the amount the executive director shall pay the consumer from the company's financial security deposit held by the executive director.

[Sections 953.105-953.150 reserved for expansion]

#### SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not sell, offer for sale, or issue a legal service contract in this state unless the company gives the legal service contract holder:

- (1) a receipt for, or other written evidence of, the purchase of the contract; and
- (2) a copy of the legal service contract.



(b) A company shall perform the services as stated in the legal service contract.

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may issue group legal service contracts. The company shall provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.

Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A contracting attorney must:

(1) be licensed in the jurisdiction in which the legal services are performed;

(2) be in good standing with the entity that licenses attorneys in that jurisdiction; and

(3) maintain professional liability and errors and omissions insurance with minimum annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED. A company may not interfere with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

Sec. 953.155. COMPANY RECORDS. (a) A company shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The company's records must include:

(1) a copy of each unique form of legal service contract filed with the executive director under Section 953.156;

(2) the name and address of each legal service contract holder;

(3) a list of the sales representatives authorized by the company to market, sell, or offer to sell the company's legal service contracts;

(4) a copy of each contract entered into between the company and a contracting attorney; and

(5) a list of complaints the company has received from legal service contract holders, including the name of the sales representative involved in the transaction leading to the complaint.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the company must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a company shall retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract.

(d) A company that discontinues business in this state shall retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the company has discharged all obligations to legal service contract holders in this state.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) A legal service contract must be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Any subsequent endorsement or attachment to the contract must also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

(b) A legal service contract marketed, sold, offered for sale, administered, or issued in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) include the name and full address of the company;

(3) include the purchase price of the contract and the terms under which the contract is sold;

(4) include the terms and restrictions governing cancellation of the contract by the company or the legal service contract holder;

(5) identify:

6-1 (A) any administrator, if the administrator is  
 6-2 not the company;  
 6-3 (B) the sales representative; and  
 6-4 (C) the name of the legal service contract  
 6-5 holder;

6-6 (6) include the amount of any deductible or copayment;  
 6-7 (7) specify the legal services and other benefits to  
 6-8 be provided under the contract, and any limitation, exception, or  
 6-9 exclusion;

6-10 (8) specify the legal services, if any, for which the  
 6-11 company will provide reimbursement and the amount of that  
 6-12 reimbursement;

6-13 (9) specify any restriction governing the  
 6-14 transferability of the contract or the assignment of benefits;

6-15 (10) include the duties of the legal service contract  
 6-16 holder;

6-17 (11) include the contact information for the  
 6-18 department, including the department's toll-free number and  
 6-19 electronic mail address, as well as a statement that the department  
 6-20 regulates the company and the company's sales representatives;

6-21 (12) explain the method to be used in resolving the  
 6-22 legal service contract holder's complaints and grievances;

6-23 (13) explain how legal services may be obtained under  
 6-24 the legal service contract;

6-25 (14) include a provision stating that no change in the  
 6-26 contract is valid until the change has been approved by an executive  
 6-27 officer of the company and unless the approval is endorsed or  
 6-28 attached to the contract;

6-29 (15) include any eligibility and effective date  
 6-30 requirements, including a definition of eligible dependents and the  
 6-31 effective date of their coverage;

6-32 (16) include the conditions under which coverage will  
 6-33 terminate;

6-34 (17) explain any subrogation arrangements;

6-35 (18) contain a payment provision that provides for a  
 6-36 grace period of at least 31 days;

6-37 (19) include conditions under which contract rates may  
 6-38 be modified; and

6-39 (20) include any other items required by the executive  
 6-40 director as determined by rule.

6-41 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A  
 6-42 legal service contract holder may terminate the legal service  
 6-43 contract if the legal service contract holder provides the company  
 6-44 with written notice of the legal service contract holder's  
 6-45 intention of terminating the contract not later than the seventh  
 6-46 day after the date the legal service contract holder receives the  
 6-47 contract.

6-48 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a  
 6-49 legal service contract holder terminates a legal service contract  
 6-50 in accordance with Section 953.157 and the holder has not sought  
 6-51 legal services under the contract before the contract is  
 6-52 terminated, the contract is void.

6-53 (b) A legal service contract holder may void the legal  
 6-54 service contract at a later time as provided by the contract.

6-55 (c) If a legal service contract is voided, the company shall  
 6-56 refund to the legal service contract holder or credit to the account  
 6-57 of the legal service contract holder the full purchase price of the  
 6-58 contract. If the company does not pay the refund or credit the  
 6-59 legal service contract holder's account before the 46th day after  
 6-60 the date the contract is voided, the company is liable to the legal  
 6-61 service contract holder for a penalty each month an amount remains  
 6-62 outstanding. The monthly penalty may not exceed 10 percent of the  
 6-63 amount outstanding.

6-64 (d) The right to void a legal service contract is not  
 6-65 transferable.

6-66 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A  
 6-67 company may cancel a legal service contract by mailing a written  
 6-68 notice of cancellation to the legal service contract holder at the  
 6-69 legal service contract holder's last known address according to the

records of the company. The company must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The company is not required to provide prior notice of cancellation if the legal service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) a material misrepresentation by the legal service contract holder to the company;
- (3) a substantial breach of a duty by the legal service contract holder; or
- (4) cancellation of the contract by the legal service contract holder.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company may not use a name that:

- (1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or
- (2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) This section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. A company described by this subsection must include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company, a sales representative, or a representative of a sales representative may not, in the company's contracts or marketing:

- (1) make, permit, or cause to be made any false or misleading statement; or
- (2) deliberately omit a material statement if the omission would be considered misleading.

Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. (a) A company may appoint an administrator or designate a person to be responsible for:

- (1) all or any part of the administration or sale of legal service contracts; and
- (2) compliance with this chapter.

(b) The executive director may adopt rules regarding the registration of an administrator with the department.

[Sections 953.163-953.200 reserved for expansion]

#### SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 953.201. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the executive director may impose an administrative sanction, including any administrative penalty, as provided by Chapter 51.

Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The executive director may issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public.

(b) The executive director may issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances.

(c) The executive director shall set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The executive director may institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352.

Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.

8-1        Sec. 953.205. APPEAL. A person affected by a ruling, order,  
 8-2 decision, or other action of the executive director or department  
 8-3 may appeal by filing a petition in a district court in Travis  
 8-4 County.

8-5        SECTION 2. Article 5.13-1, Insurance Code, is amended by  
 8-6 adding Subsection (h) to read as follows:

8-7        (h) An insurer may not issue or renew a prepaid legal  
 8-8 service contract under this article after March 1, 2004.

8-9        SECTION 3. Subsection (b), Section 951.003, Occupations  
 8-10 Code, is amended to read as follows:

8-11        (b) A law pertaining to legal service contracts under  
 8-12 Chapter 953 or insurance does not apply to a program under this  
 8-13 chapter.

8-14        SECTION 4. (a) Chapter 953, Occupations Code, as added by  
 8-15 this Act, applies only to:

8-16        (1) a legal service contract entered into on or after  
 8-17 March 1, 2004; or

8-18        (2) a legal service contract entered into before March  
 8-19 1, 2004, that meets the requirements of Subsection (c) of this  
 8-20 section.

8-21        (b) A person regulated under Chapter 953, Occupations Code,  
 8-22 as added by this Act, is not required to comply with that chapter  
 8-23 until March 1, 2004, but may implement the requirements of that  
 8-24 chapter before March 1, 2004. The failure of a legal service  
 8-25 contract company or other person to comply with Chapter 953,  
 8-26 Occupations Code, as added by this Act, or otherwise to administer a  
 8-27 legal service contract plan in the manner required by that chapter  
 8-28 before March 1, 2004, is not admissible in any court, arbitration,  
 8-29 or alternative dispute resolution proceeding and may not otherwise  
 8-30 be used to prove that the action of any person or the affected legal  
 8-31 service contract was unlawful or otherwise improper.

8-32        (c) The Texas Department of Licensing and Regulation and the  
 8-33 Texas Department of Insurance may enter into a memorandum of  
 8-34 understanding for a transition plan to transfer the regulation of  
 8-35 legal service contracts from the Texas Department of Insurance to  
 8-36 the Texas Department of Licensing and Regulation. The transition  
 8-37 plan at a minimum shall:

8-38        (1) allow persons licensed under Chapter 21, Insurance  
 8-39 Code, who have not registered with the Texas Department of  
 8-40 Licensing and Regulation to continue to sell legal service  
 8-41 contracts regulated by the Texas Department of Licensing and  
 8-42 Regulation until March 1, 2004; and

8-43        (2) allow a prepaid legal service contract issued  
 8-44 subject to Article 5.13-1, Insurance Code, to be maintained by the  
 8-45 legal service contract holder if:

8-46        (A) the insurer that issued the contract or a  
 8-47 related entity is registered with the Texas Department of Licensing  
 8-48 and Regulation under Chapter 953, Occupations Code, as added by  
 8-49 this Act, not later than March 1, 2004;

8-50        (B) the legal service contract complies with the  
 8-51 requirements established by Chapter 953, Occupations Code, as added  
 8-52 by this Act, for a legal service contract; and

8-53        (C) any addition or deletion to the contract made  
 8-54 by a legal service contract company registered with the Texas  
 8-55 Department of Licensing and Regulation is approved by the company  
 8-56 and the approval is endorsed or attached to the contract.

8-57        SECTION 5. This Act takes effect September 1, 2003.

8-58        \* \* \* \* \*

FAVORABLY AS SUBSTITUTED  
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR 597  
By Duncan  
(Author/Senate Sponsor)  
3/12/03  
(date)

We, your Committee on STATE AFFAIRS, to which was referred the attached measure,  
have on March 10, 2003, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed  
☒ the caption remained the same as original measure  
☐ the caption changed with adoption of the substitute  
  
☐ do pass as substituted, and be ordered not printed  
☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator William R. Ratliff, Chair	<input checked="" type="checkbox"/>			
Senator Todd Staples, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Ken Armbrister	<input checked="" type="checkbox"/>			
Senator Robert Duncan	<input checked="" type="checkbox"/>			
Senator Rodney Ellis	<input checked="" type="checkbox"/>			
Senator Troy Fraser	<input checked="" type="checkbox"/>			
Senator Chris Harris	<input checked="" type="checkbox"/>			
Senator Frank Madla	<input checked="" type="checkbox"/>			
Senator Jane Nelson	<input checked="" type="checkbox"/>			
TOTAL VOTES	9	0	0	0

COMMITTEE ACTION

S260 Considered in public hearing  
S270 Testimony taken

Henry Blum  
COMMITTEE CLERK

Ratliff  
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute  
Retain one copy of this form for Committee files

WITNESS LIST

SB 597

SENATE COMMITTEE REPORT

State Affairs

March 10, 2003 - 1:30PM

Registering, but not testifying:

FOR:       Brown, C. Mark   (Pre-Paid Legal), Ada, OK  
              Pinson, Kathy   (Pre-Paid Legal Services, Inc.), Ada, OK  
              Vane, Mark   (Gardere Wynne Sewell), Austin, TX

ON:         Kuntz, William   (Texas Department of Licensing and Regulation), Austin, TX  
              Stokes, Kimberly   (Texas Department of Insurance), Austin, TX

## **BILL ANALYSIS**

Senate Research Center  
78R8385 SLO-F

C.S.S.B. 597  
By: Duncan  
State Affairs  
3/11/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, legal service contracts are regulated by the Texas Department of Insurance. However, the contracts are not considered to be traditional insurance products. C.S.S.B. 597 transfers regulation of for-profit legal service contracts to the Texas Department of Licensing and Regulation (TDLR). TDLR has broad enforcement powers over companies and sales representatives who sell legal service contracts. Companies and sales representatives that sell legal service contracts are required to register with TDLR, to post financial security, maintain books and records, and include certain language in contracts.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Sections 953.005, 953.056, 953.057, and 953.162, Title 5B, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5B, Occupations Code, by adding Chapter 953, as follows:

#### **CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 953.001. DEFINITIONS. Defines "administrator," "company," "contracting attorney," "department," "executive director," "financial security," "legal service contract," "legal service contract holder," "person," and "sales representative."

Sec. 953.002. EXEMPTIONS. Provides a list of entities and contracts that this chapter does not apply to.

Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. Provides that the sale of legal service contracts under this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a) Requires an insurer who issues or renews prepaid legal service contracts under Article 5.13-1 (Legal Service Contracts), Insurance Code, to notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. Provides that an insurer that complies with this section is exempt from the requirements of Articles 21.49-2 (Declination, Cancellation, and Nonrenewal of Certain Policies) 21.49-2A (Cancellation and Nonrenewal of Certain Liability Insurance Coverage), 21.49-2B (Cancellation and Nonrenewal of Certain Property and Casualty Policies), 21.49-2D

(Prohibition on Certain Cancellations and Nonrenewals), and 21.49-2E (Requirements for Written Statement of Reason for Cancellation, Declination, or Renewal), and Chapter 827 (Withdrawal and Restriction Plans), Insurance Code.

(b) Provides that the exemptions described by Subsection (a) begin on the date the commissioner receives the notice under Subsection (a) and apply until the insurer registers with the department as required by Section 953.052.

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) Authorizes the executive director of the Texas Department of Licensing and Regulation (executive director) to investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state.

(b) Requires a company or sales representative, on request of the executive director, to make the records relevant to the regulation of legal service contracts in this state available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

(c) Authorizes the executive director, after contacting the company that has contracted with the contracting attorney, to refer a complaint received by the department concerning the performance of a contracting attorney to the State Bar of Texas, the appropriate licensing agency of another jurisdiction, if applicable or any person designated by law to receive complaints from the public concerning the performance of an attorney.

(d) Authorizes the executive director to adopt rules as necessary to implement this chapter.

[Reserves Sections 953.006-953.050 for expansion]

#### SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 953.051. REGISTRATION REQUIRED. (a) Prohibits a person to operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with the department. Authorizes a company's contract to only be sold by a sales representative who is registered with the department.

(b) Provides that a person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. APPLICATION FOR REGISTRATION. (a) Requires an applicant for registration to submit an application to the department. Requires the application to be in a form prescribed by the executive director.

(b) Provides that an application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) Requires an application for registration as a sales representative to include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. FEES. (a) Requires the executive director to develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of



legal service contracts the company sold in this state during the preceding 12-month period. Requires the executive director to set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) Requires the executive director, in addition to the annual registration fee required by Subsection (a), to collect from each company a fee equal to 1.7 percent of the annual price of each legal service contract the company sells in this state. Requires the executive director to establish a schedule and procedure for collecting this fee.

(c) Requires a company to pay the appropriate fees required by this section to be registered.

Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL SERVICE CONTRACTS SOLD. Provides that information concerning the number of legal service contracts sold by a company that is submitted under Section 953.053 is a trade secret to which Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), Government Code, applies.

Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES REPRESENTATIVES. (a) Authorizes the executive director to deny an application from a sales representative who commits certain acts.

(b) Requires each registered sales representative to pay an annual registration fee in the amount set by the executive director to cover the costs of administering this chapter.

Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION. Authorizes the executive director to adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Sec. 953.057. RENEWAL OF REGISTRATION. Requires the executive director to adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals.

[Reserves Sections 953.058-953.100 for expansion]

#### SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) Requires each company to deposit and maintain a form of financial security with the executive director. Requires the financial security deposited with the director to maintain certain market values at all times.

(b) Requires a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13-1, Insurance Code, to deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts under the Insurance Code in the preceding year.

(c) Provides that the department is responsible for the safeguarding of financial security deposited with the executive director under this section. Provides that financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders.

(d) Authorizes the executive director to order an increase in the amount of financial security required of a company under this section if the executive director finds that there has been a substantial change in a company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue.

(e) Authorizes a company, not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), to request a hearing on the issue. Requires the executive director to hold a hearing not later than the 30th day after the date a company requests a hearing.

(f) Provides that if a company does not meet the financial security requirements within a specified time a company's registration may be revoked.

Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY. (a) Requires a company whose financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, to replace the financial security or notify the executive director of the company's intention to renew the financial security.

(b) Authorizes the executive director to draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter if, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security.

Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY. Requires the executive director to maintain a company's financial security deposit so long as the company continues to do business in this state. Requires the executive director to release the deposited financial security to the company when a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state.

Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) Authorizes the state, on behalf of a legal service contract holder injured because of a company's violation of this chapter, to bring a suit for payment from the company's financial security deposit held by the executive director.

(b) Provides that the state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. Provides that this chapter does not create a private right of action.

(c) Authorizes the state to only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract.

(d) Requires the court to determine the amount the executive director is required to pay the consumer from the company's financial security deposit held by the executive director.

[Reserves Sections 953.105-953.150 for expansion]

#### SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.151. COMPANY REQUIREMENTS. (a) Prohibits a company from selling,

offering for sale, or issuing a legal service contract in this state unless the company gives the legal service contract holder a receipt for, or other written evidence of, the purchase of the contract and a copy of the legal service contract.

(b) Requires a company to perform the services as stated in the legal service contract.

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. Authorizes a company to issue group legal service contracts. Requires a company to provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.

Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. Requires a contracting attorney to be licensed in the jurisdiction in which the legal services are performed, be in good standing with the entity that licenses attorneys in that jurisdiction and maintain professional liability and errors and omissions insurance with minimum annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED. Prohibits a company from interfering with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

Sec. 953.155. COMPANY RECORDS. (a) Requires a company to maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. Requires a company's records to include certain information.

(b) Authorizes the records required by this section to be maintained in an electronic medium or through other recordkeeping technology. Requires a company to be able to reformat the record into a legible hard copy at the request of the executive director, if a record is not in a hard copy.

(c) Requires a company to retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract, except as provided by Subsection (d).

(d) Requires a company that discontinues business in this state to retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the provider has discharged all obligations to legal service contract holders in this state.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) Requires a legal service contract to be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Requires any subsequent endorsement or attachment to the contract to also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

(b) Requires a legal service contract marketed, sold, offered for sale, administered, or issued in this state to meet certain requirements.

Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. Authorizes a legal service contract holder to terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) Provides that if a legal

service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void.

(b) Authorizes a legal service contract holder to void the legal service contract at a later time as provided by the contract.

(c) Requires a company to refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the contract, if a legal service contract is voided. Provides that if the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. Provides that the monthly penalty may not exceed 10 percent of the amount outstanding.

(d) Provides that the right to void a legal service contract is not transferable.

Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) Authorizes a company to cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. Requires a company to mail the notice before the fifth day preceding the effective date of the cancellation. Requires the notice to state the effective date of the cancellation and the reason for the cancellation.

(b) Provides that a company is not required to provide prior notice of cancellation if the legal service contract is canceled due to certain circumstances.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) Prohibits a company from using a name that includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business or is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) Provides that this section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. Requires a company described by this subsection to include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. Prohibits a company, a sales representative, or a representative of a sales representative, in the company's contracts or marketing to make, permit, or cause to be made any false or misleading statement or deliberately omit a material statement if the omission would be considered misleading.

Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. (a) Authorizes a company to appoint an administrator or designate a person to be responsible for all or any part of the administration or sale of legal service contracts and compliance with this chapter.

(b) Authorizes the executive director to adopt rules regarding the registration of an administrator with the department.

[Reserves Sections 953.163-953.200 for expansion]

#### SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 953.201. DISCIPLINARY ACTION. Authorizes the executive director to impose an

administrative sanction, including any administrative penalty, as provided by Chapter 51 on a finding that a ground for disciplinary action exists under this chapter.

Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) Authorizes the executive director to issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public.

(b) Authorizes the executive director to issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances.

(c) Requires the executive director to set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) Authorizes the executive director to institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) Authorizes the executive director to institute an action for a civil penalty as provided by Section 51.352, in addition to the injunctive relief provided by Subsection (a).

Sec. 953.204. ADMINISTRATIVE PROCEDURE. Provides that Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.

Sec. 953.205. APPEAL. Authorizes a person affected by a ruling, order, decision, or other action of the executive director or department to appeal by filing a petition in a district court in Travis County.

SECTION 2. Amends Article 5.13-1, Insurance Code, by adding Subsection (h) to prohibit an insurer from issuing a prepaid legal service contract under this article after March 1, 2004.

SECTION 3. Amends Section 951.003(b), Occupations Code, to provide that a law pertaining to legal service contracts under Chapter 953 or insurance does not apply to a program under this chapter.

SECTION 4. (a) Provides that Chapter 953, Occupations Code, as added by this Act, applies only to a legal service contract entered into on or after March 1, 2004, or a legal service contract entered into before March 1, 2004, that meets the requirements of Subsection (c) of this section.

(b) Provides that a person regulated under Chapter 953, Occupations Code, as added by this Act, is not required to comply with that chapter until March 1, 2004, but may implement the requirements of that chapter before March 1, 2004. Provides that the failure of a legal service contract company or other person to comply with Chapter 953, Occupations Code, as added by this Act, or otherwise to administer a legal service contract plan in the manner required by that chapter before March 1, 2004, is not admissible in any court, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected legal service contract was unlawful or otherwise improper.

(c) Authorizes the Texas Department of Licensing and Regulation and the Texas Department of Insurance to enter into a memorandum of understanding for a transition plan to transfer the regulation of legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. Requires the transition plan to meet certain minimum

standards.

SECTION 5. Effective date: September 1, 2003.

**SUMMARY OF COMMITTEE CHANGES**

SECTION 1. Amends As Filed S.B. 597, proposed Section 953.004, Occupations Code, to include an insurer who renews prepaid legal service contracts in addition to an insurer who issues prepaid legal service contracts. Provides that the transfer of regulation of the insurer's legal service contracts will be from the Texas Department of Insurance to the Texas Department of Licensing and Regulation.

Amends proposed Section 953.156, Occupations Code, to require any subsequent endorsement or attachment to the contract to be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

Amends proposed Section 953.157, Occupations Code, to extend the time in which a legal service contract holder provides a company with written notice of termination from the third day to the seventh day after the date the legal service contract holder receives the contract.

SECTION 2. No changes.

SECTION 3. No changes.

SECTION 4. Amends proposed Subsection (c) to authorize, rather than require, the Texas Department of Licensing and Regulation and the Texas Department of Insurance to enter into a memorandum of understanding in relation to a transition plan to transfer the regulation of legal service contracts.

SECTION 5. No changes.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**Revision 1**

**March 11, 2003**

**TO:** Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE:** SB597 by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
2004	(\$63,188)	\$63,188	(\$6,597)	\$6,597
2005	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2006	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2007	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

Fiscal Year	Change in Number of State Employees from FY 2003
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Texas Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Texas Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, .75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and .25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, .5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 9, 2003

TO: Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, As Introduced: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
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## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Texas Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Texas Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, .75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and .25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, .5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB

## REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SSB 597, by Duncan,  
(Bill No.) (Author/Sponsor)  
was heard by the Committee on State Affairs on MAR. 10, 2003,  
and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Henry Brainer  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

ADOPTED

MAR 26 2003

*Atty. Gen.*  
Secretary of the Senate

By: Duncan

S.B. No. 597

Substitute the following for S.B. No. 597:

By: [Signature]

C.S. S.B. No. 597

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Occupations Code, is amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT

COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for the administration of a legal service contract. The term includes a person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

3-12-03

3-26-03 <sup>82</sup>

5-29-03 2 H. Dms.  
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1           (4) "Department" means the Texas Department of  
2 Licensing and Regulation.

3           (5) "Executive director" means the executive director  
4 of the Texas Department of Licensing and Regulation or the  
5 executive director's designee.

6           (6) "Financial security" means a surety bond, a  
7 certificate of deposit, or any other item approved by the executive  
8 director.

9           (7) "Legal service contract" means an agreement:

10           (A) that is entered into for a separately stated  
11 consideration; and

12           (B) under which the company obtains legal  
13 services for a legal service contract holder through a contracting  
14 attorney.

15           (8) "Legal service contract holder" means the person  
16 who purchases or otherwise holds a legal service contract or who is  
17 covered under a group legal service contract.

18           (9) "Person" means an individual or a partnership,  
19 company, corporation, association, or other private group.

20           (10) "Sales representative" means a person who sells  
21 or solicits legal service contracts to a person on behalf of a  
22 company.

23       Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24           (1) a nonprofit legal services corporation under  
25 Chapter 961, Insurance Code;

26           (2) an automobile club supplying services under  
27 Chapter 722, Transportation Code;

1           (3) a prepaid legal services program under Chapter  
2 951;

3           (4) a lawyer referral service under Chapter 952;

4           (5) a retainer contract between an attorney and a  
5 client, and similar contracts made with a group of clients involved  
6 in the same or closely related legal matters; or

7           (6) a contingency fee contract between an attorney and  
8 a client.

9           Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts  
10 of marketing, selling, offering for sale, issuing, making,  
11 proposing to make, and administering a legal service contract that  
12 is regulated by this chapter are exempt from the Insurance Code and  
13 other laws of this state regulating the business of insurance.

14           Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a)  
15 An insurer who issues or renews prepaid legal service contracts  
16 under Article 5.13-1, Insurance Code, shall notify the commissioner  
17 of insurance in writing not later than the 60th day before  
18 transferring regulation of the insurer's legal service contracts  
19 from the Texas Department of Insurance to the Texas Department of  
20 Licensing and Regulation. An insurer that complies with this  
21 section is exempt from the requirements of:

22           (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,  
23 and 21.49-2E, Insurance Code; and

24           (2) Chapter 827, Insurance Code.

25           (b) The exemptions described by Subsection (a) begin on the  
26 date the commissioner receives the notice under Subsection (a) and  
27 apply until the insurer registers with the department as required

317

1 by Section 953.052.

2 Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a)  
3 The executive director may investigate a company, administrator,  
4 sales representative, or other person as necessary to enforce this  
5 chapter and protect legal service contract holders in this state.

6 (b) On request of the executive director, a company or sales  
7 representative shall make the records relevant to the regulation of  
8 legal service contracts in this state available to the executive  
9 director as necessary to enable the executive director to  
10 reasonably determine compliance with this chapter.

11 (c) After contacting the company that has contracted with  
12 the contracting attorney, the executive director may refer a  
13 complaint received by the department concerning the performance of  
14 a contracting attorney to:

15 (1) the State Bar of Texas;

16 (2) the appropriate licensing agency of another  
17 jurisdiction, if applicable; or

18 (3) any person designated by law to receive complaints  
19 from the public concerning the performance of an attorney.

20 (d) The executive director may adopt rules as necessary to  
21 implement this chapter.

22 [Sections 953.006-953.050 reserved for expansion]

23 SUBCHAPTER B. REGISTRATION REQUIREMENTS

24 Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not  
25 operate as a company or sales representative of legal service  
26 contracts sold in this state unless the person is registered with  
27 the department. A company's contract may only be sold by a sales

1 representative who is registered with the department.

2 (b) A person who collects commissions for the sale of legal  
3 service contracts but who does not actively sell or solicit legal  
4 service contracts is not required to register under this  
5 subchapter.

6 Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An  
7 applicant for registration must submit an application to the  
8 department. The application must be in the form prescribed by the  
9 executive director.

10 (b) An application for registration as a company must  
11 include evidence satisfactory to the executive director of  
12 compliance with the applicable financial security requirements  
13 prescribed by Subchapter C.

14 (c) An application for registration as a sales  
15 representative must include a list of the companies for which the  
16 sales representative will sell or solicit legal service contracts.

17 Sec. 953.053. FEES. (a) The executive director shall  
18 develop a tiered fee schedule of annual registration fees under  
19 which a company's registration fee is based on the number of legal  
20 service contracts the company sold in this state during the  
21 preceding 12-month period. The executive director shall set the  
22 amounts of the fees required by this subsection to cover the costs  
23 of administering this chapter.

HA 24  
3rd 25  
26 (b) In addition to the annual registration fee required by  
27 Subsection (a), the executive director shall collect from each  
company a fee equal to 1.7 percent of the annual price of each legal  
service contract the company sells in this state. The executive

5/6



~~1 director shall establish a schedule and procedure for collecting~~  
~~2 this fee.~~

3       (c) To be registered, a company must pay the appropriate  
4 fees required by this section.

5       Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL  
6 SERVICE CONTRACTS SOLD. Information concerning the number of legal  
7 service contracts sold by a company that is submitted under Section  
8 953.053 is a trade secret to which Section 552.110, Government  
9 Code, applies.

10       Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES  
11 REPRESENTATIVES. (a) The executive director may deny an  
12 application from a sales representative who:

13       (1) made a material misrepresentation or fraudulent  
14 statement in the application;

15       (2) has had a license revoked under the Insurance  
16 Code;

17       (3) has had a license suspended or revoked under  
18 Section 82.062, Government Code; or

19       (4) fails to pay the fee required under Subsection  
20 (b).

21       (b) Each registered sales representative shall pay an  
22 annual registration fee in the amount set by the executive director  
23 to cover the costs of administering this chapter.

24       Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION. / 47  
25 The executive director may adopt rules regarding the procedures and  
26 fees a company or sales representative must follow and pay when  
27 requesting a modification to the company's or sales

1 representative's registration information that is on file with the  
2 department.

3 Sec. 953.057. RENEWAL OF REGISTRATION. The executive  
4 director shall adopt rules for the renewal of a company's or sales  
5 representative's registration, including a rule that addresses  
6 late renewals.

7 [Sections 953.058-953.100 reserved for expansion]

8 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE  
9 CONTRACT COMPANIES

10 Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To  
11 ensure the faithful performance of a company's obligations to its  
12 legal service contract holders, each company must deposit and  
13 maintain a form of financial security with the executive director.  
14 The financial security deposited with the director must maintain at  
15 all times the following market values:

16 (1) a company generating \$300,000 or less in annual  
17 gross revenue in this state from the sale of legal service contracts  
18 in the preceding year shall deposit at least \$50,000 with the  
19 executive director;

20 (2) a company generating more than \$300,000 but less  
21 than \$750,000 in annual gross revenue in this state from the sale of  
22 legal service contracts in the preceding year shall deposit at  
23 least \$75,000 with the executive director; and

24 (3) a company generating \$750,000 or more in annual 7/8  
25 gross revenue in this state from the sale of legal service contracts  
26 in the preceding year shall deposit at least \$100,000 with the  
27 executive director.

1        (b) For purposes of Subsection (a), if a company that had no  
2 gross revenue in this state from the sale of legal service contracts  
3 in the preceding year previously generated revenue from the sale of  
4 prepaid legal service contracts under Article 5.13-1, Insurance  
5 Code, the company shall deposit an amount of financial security  
6 based on the revenue generated from the sale of prepaid legal  
7 service contracts under the Insurance Code in the preceding year.

8        (c) The department is responsible for the safeguarding of  
9 financial security deposited with the executive director under this  
10 section. Financial security is not subject to taxation and is to be  
11 used exclusively to guarantee the company's performance of its  
12 obligations to its legal service contract holders.

13        (d) The executive director may order an increase in the  
14 amount of financial security required of a company under this  
15 section if the executive director finds that there has been a  
16 substantial change in the company, including an increase in the  
17 amount of fees the company is charging consumers or an increase in  
18 the company's annual gross revenue.

19        (e) Not later than the 30th day after the date the executive  
20 director orders a financial security increase under Subsection (d),  
21 the company may request a hearing on the issue. The executive  
22 director shall hold a hearing not later than the 30th day after the  
23 date a company requests a hearing.

24        (f) Failure of a company to meet the financial security/ 9/9  
25 requirements in this section not later than the 30th day after the  
26 date the executive director issues a final decision in the event of  
27 a hearing or the 30th day after the date the period for submitting a

1 request for a hearing expires constitutes a ground for revocation  
2 of the company's registration.

3 Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

4 (a) If a company's financial security under Section 953.101 is  
5 issued or written for a specified term, not later than the 90th day  
6 before the date the term expires, the company shall:

7 (1) replace the financial security; or

8 (2) notify the executive director of the company's  
9 intention to renew the financial security.

10 (b) If, not later than the 60th day before the date the term  
11 of a company's financial security expires, the executive director  
12 does not receive satisfactory notification of a company's renewal  
13 or replacement of the financial security, the executive director  
14 may draw on the company's financial security to the extent  
15 necessary to ensure that the company's obligations to its legal  
16 service contract holders are met in accordance with this chapter.

17 Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

18 The executive director shall maintain a company's financial  
19 security deposit so long as the company continues to do business in  
20 this state. When a company ceases to do business in this state and  
21 furnishes the executive director with satisfactory proof that the  
22 company has discharged or otherwise adequately met all obligations  
23 to its legal service contract holders in this state, the executive  
24 director shall release the deposited financial security to the  
25 company.

26 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,  
27 on behalf of a legal service contract holder injured because of a

1 company's violation of this chapter, may bring a suit for payment  
2 from the company's financial security deposit held by the executive  
3 director.

4 (b) The state is the only party that may bring suit for  
5 payment from a company's financial security deposit held by the  
6 executive director. This chapter does not create a private right of  
7 action.

8 (c) The state may only seek damages for the cost of the legal  
9 services the company failed to provide to a legal service contract  
10 holder under the terms of the legal service contract.

11 (d) The court shall determine the amount the executive  
12 director shall pay the consumer from the company's financial  
13 security deposit held by the executive director.

*Insert*  
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*2nd/258*  
14 [Sections 953.10<sup>6</sup>8-953.150 reserved for expansion]

#### SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

16 Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not  
17 sell, offer for sale, or issue a legal service contract in this  
18 state unless the company gives the legal service contract holder:

19 (1) a receipt for, or other written evidence of, the  
20 purchase of the contract; and

21 (2) a copy of the legal service contract.

22 (b) A company shall perform the services as stated in the  
23 legal service contract.

24 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may  
25 issue group legal service contracts. The company shall provide a  
26 legal service contract holder who obtains a group contract with a  
27 document that describes the company's services and complies with

1 the requirements of this chapter.

2 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A  
3 contracting attorney must:

4 (1) be licensed in the jurisdiction in which the legal  
5 services are performed;

6 (2) be in good standing with the entity that licenses  
7 attorneys in that jurisdiction; and

8 (3) maintain professional liability and errors and  
9 omissions insurance with minimum annual limits of \$100,000 for each  
10 occurrence and \$300,000 in the aggregate.

11 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES  
12 PROHIBITED. A company may not interfere with the attorney-client  
13 relationship or with the contracting attorney's independent  
14 exercise of professional judgment.

15 Sec. 953.155. COMPANY RECORDS. (a) A company shall  
16 maintain accurate accounts, books, and other records regarding  
17 transactions regulated under this chapter. The company's records  
18 must include:

19 (1) a copy of each unique form of legal service  
20 contract filed with the executive director under Section 953.156;

21 (2) the name and address of each legal service  
22 contract holder;

23 (3) a list of the sales representatives authorized by  
24 the company to market, sell, or offer to sell the company's legal  
25 service contracts;

26 (4) a copy of each contract entered into between the  
27 company and a contracting attorney; and

1           (5) a list of complaints the company has received from  
2 legal service contract holders, including the name of the sales  
3 representative involved in the transaction leading to the  
4 complaint.

5           (b) The records required by this section may be maintained  
6 in an electronic medium or through other recordkeeping technology.  
7 If a record is not in a hard copy, the company must be able to  
8 reformat the record into a legible hard copy at the request of the  
9 executive director.

10           (c) Except as provided by Subsection (d), a company shall  
11 retain the records required by this section until at least the  
12 second anniversary of the termination date of the specified period / <sup>12/13</sup>  
13 of coverage under the legal service contract.

14           (d) A company that discontinues business in this state shall  
15 retain its records until the company furnishes the executive  
16 director with proof satisfactory to the executive director that the  
17 ~~company~~ <sup>company</sup> provider has discharged all obligations to legal service contract  
18 holders in this state.

19           Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED  
20 DISCLOSURES. (a) A legal service contract must be filed with the  
21 executive director before it is marketed, sold, offered for sale,  
22 administered, or issued in this state. Any subsequent endorsement  
23 or attachment to the contract must also be filed with the executive  
24 director before the endorsement or attachment is delivered to legal  
25 service contract holders.

26           (b) A legal service contract marketed, sold, offered for  
27 sale, administered, or issued in this state must:

1           (1) be written, printed, or typed in clear,  
2 understandable language that is easy to read;  
3           (2) include the name and full address of the company;  
4           (3) include the purchase price of the contract and the  
5 terms under which the contract is sold;  
6           (4) include the terms and restrictions governing  
7 cancellation of the contract by the company or the legal service  
8 contract holder;  
9           (5) identify:  
10           (A) any administrator, if the administrator is  
11 not the company;  
12           (B) the sales representative; and /  
13           (C) the name of the legal service contract  
14 holder;  
15           (6) include the amount of any deductible or copayment;  
16           (7) specify the legal services and other benefits to  
17 be provided under the contract, and any limitation, exception, or  
18 exclusion;  
19           (8) specify the legal services, if any, for which the  
20 company will provide reimbursement and the amount of that  
21 reimbursement;  
22           (9) specify any restriction governing the  
23 transferability of the contract or the assignment of benefits;  
24           (10) include the duties of the legal service contract  
25 holder;  
26           (11) include the contact information for the  
27 department, including the department's toll-free number and



1 electronic mail address, as well as a statement that the department  
2 regulates the company and the company's sales representatives;

3 (12) explain the method to be used in resolving the  
4 legal service contract holder's complaints and grievances;

5 (13) explain how legal services may be obtained under  
6 the legal service contract;

7 (14) include a provision stating that no change in the  
8 contract is valid until the change has been approved by an executive  
9 officer of the company and unless the approval is endorsed or  
10 attached to the contract;

11 (15) include any eligibility and effective date  
12 requirements, including a definition of eligible dependents and the / 14 | 15  
13 effective date of their coverage;

14 (16) include the conditions under which coverage will  
15 terminate;

16 (17) explain any subrogation arrangements;

17 (18) contain a payment provision that provides for a  
18 grace period of at least 31 days;

19 (19) include conditions under which contract rates may  
20 be modified; and

21 (20) include any other items required by the executive  
22 director as determined by rule.

23 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A  
24 legal service contract holder may terminate the legal service  
25 contract if the legal service contract holder provides the company  
26 with written notice of the legal service contract holder's  
27 intention of terminating the contract not later than the seventh

1 day after the date the legal service contract holder receives the  
2 contract.

3 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a  
4 legal service contract holder terminates a legal service contract  
5 in accordance with Section 953.157 and the holder has not sought  
6 legal services under the contract before the contract is  
7 terminated, the contract is void.

8 (b) A legal service contract holder may void the legal  
9 service contract at a later time as provided by the contract.

10 (c) If a legal service contract is voided, the company shall  
11 refund to the legal service contract holder or credit to the account  
12 of the legal service contract holder the full purchase price of the / 15 / 16  
13 contract. If the company does not pay the refund or credit the  
14 legal service contract holder's account before the 46th day after  
15 the date the contract is voided, the company is liable to the legal  
16 service contract holder for a penalty each month an amount remains  
17 outstanding. The monthly penalty may not exceed 10 percent of the  
18 amount outstanding.

19 (d) The right to void a legal service contract is not  
20 transferable.

21 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A  
22 company may cancel a legal service contract by mailing a written  
23 notice of cancellation to the legal service contract holder at the  
24 legal service contract holder's last known address according to the  
25 records of the company. The company must mail the notice before the  
26 fifth day preceding the effective date of the cancellation. The  
27 notice must state the effective date of the cancellation and the

1 reason for the cancellation.

2 (b) The company is not required to provide prior notice of  
3 cancellation if the legal service contract is canceled because of:

4 (1) nonpayment of the consideration for the contract;

5 (2) a material misrepresentation by the legal service  
6 contract holder to the company;

7 (3) a substantial breach of a duty by the legal service  
8 contract holder; or

9 (4) cancellation of the contract by the legal service  
10 contract holder.

11 Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company  
12 may not use a name that: 16/17

13 (1) includes "insurance," "casualty," "surety," or  
14 "mutual" or any other word descriptive of the insurance, casualty,  
15 or surety business; or

16 (2) is deceptively similar to the name or description  
17 of an insurance or surety corporation or to the name of any other  
18 company.

19 (b) This section does not apply to a company that, before  
20 September 1, 2003, included a word prohibited under this section in  
21 its name. A company described by this subsection must include in  
22 each legal service contract a statement substantially similar to  
23 the following: "This agreement is not an insurance contract."

24 Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,  
25 a sales representative, or a representative of a sales  
26 representative may not, in the company's contracts or marketing:

27 (1) make, permit, or cause to be made any false or

1 misleading statement; or

2 (2) deliberately omit a material statement if the  
3 omission would be considered misleading.

4 Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF  
5 ADMINISTRATOR. (a) A company may appoint an administrator or  
6 designate a person to be responsible for:

7 (1) all or any part of the administration or sale of  
8 legal service contracts; and

9 (2) compliance with this chapter.

10 (b) The executive director may adopt rules regarding the  
11 registration of an administrator with the department.

12 [Sections 953.163-953.200 reserved for expansion] <sup>17/</sup>/<sub>18</sub>

13 SUBCHAPTER E. DISCIPLINARY ACTION

14 Sec. 953.201. DISCIPLINARY ACTION. On a finding that a  
15 ground for disciplinary action exists under this chapter, the  
16 executive director may impose an administrative sanction,  
17 including any administrative penalty, as provided by Chapter 51.

18 Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The  
19 executive director may issue an emergency cease and desist order to  
20 enforce this chapter if the executive director determines that an  
21 emergency exists requiring immediate action to protect the public.

22 (b) The executive director may issue the emergency cease and  
23 desist order without notice and hearing if the executive director  
24 determines that an immediate issuance is necessary under the  
25 circumstances.

26 (c) The executive director shall set the time and place for  
27 a hearing to affirm, modify, or set aside an emergency cease and

1 desist order that was issued without a hearing.

2 Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
3 executive director may institute an action against a company or  
4 sales representative for injunctive relief under Section 51.352 to  
5 restrain a violation or a threatened violation of this chapter or an  
6 order issued or rule adopted under this chapter.

7 (b) In addition to the injunctive relief provided by  
8 Subsection (a), the executive director may institute an action for  
9 a civil penalty as provided by Section 51.352.

10 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,  
11 51.353, and 51.354 apply to a disciplinary action taken under this  
12 chapter. / 18/19

13 Sec. 953.205. APPEAL. A person affected by a ruling, order,  
14 decision, or other action of the executive director or department  
15 may appeal by filing a petition in a district court in Travis  
16 County.

17 SECTION 2. Article 5.13-1, Insurance Code, is amended by  
18 adding Subsection (h) to read as follows:

19 (h) An insurer may not issue or renew a prepaid legal  
20 service contract under this article after March 1, 2004.

21 SECTION 3. <sup>Subsection (b),</sup> Section 951.003~~40~~, Occupations Code, is amended  
22 to read as follows:

23 (b) A law pertaining to legal service contracts under  
24 Chapter 953 or insurance does not apply to a program under this  
25 chapter.

26 SECTION 4. (a) Chapter 953, Occupations Code, as added by  
27 this Act, applies only to:

1           (1) a legal service contract entered into on or after  
2 March 1, 2004; or

3           (2) a legal service contract entered into before March  
4 1, 2004, that meets the requirements of Subsection (c) of this  
5 section.

6           (b) A person regulated under Chapter 953, Occupations Code,  
7 as added by this Act, is not required to comply with that chapter  
8 until March 1, 2004, but may implement the requirements of that  
9 chapter before March 1, 2004. The failure of a legal service  
10 contract company or other person to comply with Chapter 953,  
11 Occupations Code, as added by this Act, or otherwise to administer a  
12 legal service contract plan in the manner required by that chapter<sup>19</sup>/<sub>20</sub>  
13 before March 1, 2004, is not admissible in any court, arbitration,  
14 or alternative dispute resolution proceeding and may not otherwise  
15 be used to prove that the action of any person or the affected legal  
16 service contract was unlawful or otherwise improper.

17           (c) The Texas Department of Licensing and Regulation and the  
18 Texas Department of Insurance may enter into a memorandum of  
19 understanding for a transition plan to transfer the regulation of  
20 legal service contracts from the Texas Department of Insurance to  
21 the Texas Department of Licensing and Regulation. The transition  
22 plan at a minimum shall:

23           (1) allow persons licensed under Chapter 21, Insurance  
24 Code, who have not registered with the Texas Department of  
25 Licensing and Regulation to continue to sell legal service  
26 contracts regulated by the Texas Department of Licensing and  
27 Regulation until March 1, 2004; and

1           (2) allow a prepaid legal service contract issued  
2 subject to Article 5.13-1, Insurance Code, to be maintained by the  
3 legal service contract holder if:

4           (A) the insurer that issued the contract or a  
5 related entity is registered with the Texas Department of Licensing  
6 and Regulation under Chapter 953, Occupations Code, as added by  
7 this Act, not later than March 1, 2004;

8           (B) the legal service contract complies with the  
9 requirements established by Chapter 953, Occupations Code, as added  
10 by this Act, for a legal service contract; and

11           (C) any addition or deletion to the contract made  
12 by a legal service contract company registered with the Texas  
13 Department of Licensing and Regulation is approved by the company  
14 and the approval is endorsed or attached to the contract.

15           SECTION 5. This Act takes effect September 1, 2003.

Engrossed March 26, 2003

Mandi A. Deland

Engrossing Clerk

I certify this to be a true and correct  
copy of the introduced document as  
referred or transmitted to committee.

Chief Clerk of the House

By: Duncan  
(Pitts, Flores)

S.B. No. 597

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain companies that provide  
for-profit legal service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Occupations Code, is  
amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT

COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for  
the administration of a legal service contract. The term includes a  
person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service  
contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting  
attorney to provide or obtain covered legal services for a legal  
service contract holder; and

(C) operates as a for-profit legal service  
contract company.

(3) "Contracting attorney" means an attorney who has  
entered into a contract with a company to provide or obtain covered  
legal services for a legal service contract holder.



1           (4) "Department" means the Texas Department of  
2 Licensing and Regulation.

3           (5) "Executive director" means the executive director  
4 of the Texas Department of Licensing and Regulation or the  
5 executive director's designee.

6           (6) "Financial security" means a surety bond, a  
7 certificate of deposit, or any other item approved by the executive  
8 director.

9           (7) "Legal service contract" means an agreement:

10           (A) that is entered into for a separately stated  
11 consideration; and

12           (B) under which the company obtains legal  
13 services for a legal service contract holder through a contracting  
14 attorney.

15           (8) "Legal service contract holder" means the person  
16 who purchases or otherwise holds a legal service contract or who is  
17 covered under a group legal service contract.

18           (9) "Person" means an individual or a partnership,  
19 company, corporation, association, or other private group.

20           (10) "Sales representative" means a person who sells  
21 or solicits legal service contracts to a person on behalf of a  
22 company.

23           Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24           (1) a nonprofit legal services corporation under  
25 Chapter 961, Insurance Code;

26           (2) an automobile club supplying services under  
27 Chapter 722, Transportation Code;

1           (3) a prepaid legal services program under Chapter  
2 951;

3           (4) a lawyer referral service under Chapter 952;

4           (5) a retainer contract between an attorney and a  
5 client, and similar contracts made with a group of clients involved  
6 in the same or closely related legal matters; or

7           (6) a contingency fee contract between an attorney and  
8 a client.

9           Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts  
10 of marketing, selling, offering for sale, issuing, making,  
11 proposing to make, and administering a legal service contract that  
12 is regulated by this chapter are exempt from the Insurance Code and  
13 other laws of this state regulating the business of insurance.

14           Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS.  
15 (a) An insurer who issues or renews prepaid legal service  
16 contracts under Article 5.13-1, Insurance Code, shall notify the  
17 commissioner of insurance in writing not later than the 60th day  
18 before transferring regulation of the insurer's legal service  
19 contracts from the Texas Department of Insurance to the Texas  
20 Department of Licensing and Regulation. An insurer that complies  
21 with this section is exempt from the requirements of:

22           (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,  
23 and 21.49-2E, Insurance Code; and

24           (2) Chapter 827, Insurance Code.

25           (b) The exemptions described by Subsection (a) begin on the  
26 date the commissioner receives the notice under Subsection (a) and  
27 apply until the insurer registers with the department as required

by Section 953.052.

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR.

(a) The executive director may investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state.

(b) On request of the executive director, a company or sales representative shall make the records relevant to the regulation of legal service contracts in this state available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

(c) After contacting the company that has contracted with the contracting attorney, the executive director may refer a complaint received by the department concerning the performance of a contracting attorney to:

(1) the State Bar of Texas;

(2) the appropriate licensing agency of another jurisdiction, if applicable; or

(3) any person designated by law to receive complaints from the public concerning the performance of an attorney.

(d) The executive director may adopt rules as necessary to implement this chapter.

[Sections 953.006-953.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with

the department. A company's contract may only be sold by a sales representative who is registered with the department.

(b) A person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the department. The application must be in the form prescribed by the executive director.

(b) An application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) An application for registration as a sales representative must include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. FEES. (a) The executive director shall develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. The executive director shall set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) In addition to the annual registration fee required by Subsection (a), the executive director shall collect from each company a fee equal to 1.7 percent of the annual price of each legal

1 service contract the company sells in this state. The executive  
2 director shall establish a schedule and procedure for collecting  
3 this fee.

4 (c) To be registered, a company must pay the appropriate  
5 fees required by this section.

6 Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL  
7 SERVICE CONTRACTS SOLD. Information concerning the number of legal  
8 service contracts sold by a company that is submitted under Section  
9 953.053 is a trade secret to which Section 552.110, Government  
10 Code, applies.

11 Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES  
12 REPRESENTATIVES. (a) The executive director may deny an  
13 application from a sales representative who:

14 (1) made a material misrepresentation or fraudulent  
15 statement in the application;

16 (2) has had a license revoked under the Insurance  
17 Code;

18 (3) has had a license suspended or revoked under  
19 Section 82.062, Government Code; or

20 (4) fails to pay the fee required under Subsection  
21 (b).

22 (b) Each registered sales representative shall pay an  
23 annual registration fee in the amount set by the executive director  
24 to cover the costs of administering this chapter.

25 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.  
26 The executive director may adopt rules regarding the procedures and  
27 fees a company or sales representative must follow and pay when

1 requesting a modification to the company's or sales  
 2 representative's registration information that is on file with the  
 3 department.

4 Sec. 953.057. RENEWAL OF REGISTRATION. The executive  
 5 director shall adopt rules for the renewal of a company's or sales  
 6 representative's registration, including a rule that addresses  
 7 late renewals.

8 [Sections 953.058-953.100 reserved for expansion]

9 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE

10 CONTRACT COMPANIES

11 Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To  
 12 ensure the faithful performance of a company's obligations to its  
 13 legal service contract holders, each company must deposit and  
 14 maintain a form of financial security with the executive director.  
 15 The financial security deposited with the director must maintain at  
 16 all times the following market values:

17 (1) a company generating \$300,000 or less in annual  
 18 gross revenue in this state from the sale of legal service contracts  
 19 in the preceding year shall deposit at least \$50,000 with the  
 20 executive director;

21 (2) a company generating more than \$300,000 but less  
 22 than \$750,000 in annual gross revenue in this state from the sale of  
 23 legal service contracts in the preceding year shall deposit at  
 24 least \$75,000 with the executive director; and

25 (3) a company generating \$750,000 or more in annual  
 26 gross revenue in this state from the sale of legal service contracts  
 27 in the preceding year shall deposit at least \$100,000 with the

executive director.

(b) For purposes of Subsection (a), if a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13-1, Insurance Code, the company shall deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts under the Insurance Code in the preceding year.

(c) The department is responsible for the safeguarding of financial security deposited with the executive director under this section. Financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders.

(d) The executive director may order an increase in the amount of financial security required of a company under this section if the executive director finds that there has been a substantial change in the company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue.

(e) Not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), the company may request a hearing on the issue. The executive director shall hold a hearing not later than the 30th day after the date a company requests a hearing.

(f) Failure of a company to meet the financial security requirements in this section not later than the 30th day after the date the executive director issues a final decision in the event of

1 a hearing or the 30th day after the date the period for submitting a  
2 request for a hearing expires constitutes a ground for revocation  
3 of the company's registration.

4 Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

5 (a) If a company's financial security under Section 953.101 is  
6 issued or written for a specified term, not later than the 90th day  
7 before the date the term expires, the company shall:

8 (1) replace the financial security; or

9 (2) notify the executive director of the company's  
10 intention to renew the financial security.

11 (b) If, not later than the 60th day before the date the term  
12 of a company's financial security expires, the executive director  
13 does not receive satisfactory notification of a company's renewal  
14 or replacement of the financial security, the executive director  
15 may draw on the company's financial security to the extent  
16 necessary to ensure that the company's obligations to its legal  
17 service contract holders are met in accordance with this chapter.

18 Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

19 The executive director shall maintain a company's financial  
20 security deposit so long as the company continues to do business in  
21 this state. When a company ceases to do business in this state and  
22 furnishes the executive director with satisfactory proof that the  
23 company has discharged or otherwise adequately met all obligations  
24 to its legal service contract holders in this state, the executive  
25 director shall release the deposited financial security to the  
26 company.

27 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,



on behalf of a legal service contract holder injured because of a company's violation of this chapter, may bring a suit for payment from the company's financial security deposit held by the executive director.

(b) The state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. This chapter does not create a private right of action.

(c) The state may only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract.

(d) The court shall determine the amount the executive director shall pay the consumer from the company's financial security deposit held by the executive director.

[Sections 953.105-953.150 reserved for expansion]

#### SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not sell, offer for sale, or issue a legal service contract in this state unless the company gives the legal service contract holder:

(1) a receipt for, or other written evidence of, the purchase of the contract; and

(2) a copy of the legal service contract.

(b) A company shall perform the services as stated in the legal service contract.

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may issue group legal service contracts. The company shall provide a legal service contract holder who obtains a group contract with a

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1 document that describes the company's services and complies with  
2 the requirements of this chapter.

3 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A  
4 contracting attorney must:

5 (1) be licensed in the jurisdiction in which the legal  
6 services are performed;

7 (2) be in good standing with the entity that licenses  
8 attorneys in that jurisdiction; and

9 (3) maintain professional liability and errors and  
10 omissions insurance with minimum annual limits of \$100,000 for each  
11 occurrence and \$300,000 in the aggregate.

12 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES  
13 PROHIBITED. A company may not interfere with the attorney-client  
14 relationship or with the contracting attorney's independent  
15 exercise of professional judgment.

16 Sec. 953.155. COMPANY RECORDS. (a) A company shall  
17 maintain accurate accounts, books, and other records regarding  
18 transactions regulated under this chapter. The company's records  
19 must include:

20 (1) a copy of each unique form of legal service  
21 contract filed with the executive director under Section 953.156;

22 (2) the name and address of each legal service  
23 contract holder;

24 (3) a list of the sales representatives authorized by  
25 the company to market, sell, or offer to sell the company's legal  
26 service contracts;

27 (4) a copy of each contract entered into between the

company and a contracting attorney; and

(5) a list of complaints the company has received from legal service contract holders, including the name of the sales representative involved in the transaction leading to the complaint.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the company must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a company shall retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract.

(d) A company that discontinues business in this state shall retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the company has discharged all obligations to legal service contract holders in this state.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) A legal service contract must be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Any subsequent endorsement or attachment to the contract must also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

(b) A legal service contract marketed, sold, offered for

sale, administered, or issued in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) include the name and full address of the company;

(3) include the purchase price of the contract and the terms under which the contract is sold;

(4) include the terms and restrictions governing cancellation of the contract by the company or the legal service contract holder;

(5) identify:

(A) any administrator, if the administrator is not the company;

(B) the sales representative; and

(C) the name of the legal service contract holder;

(6) include the amount of any deductible or copayment;

(7) specify the legal services and other benefits to be provided under the contract, and any limitation, exception, or exclusion;

(8) specify the legal services, if any, for which the company will provide reimbursement and the amount of that reimbursement;

(9) specify any restriction governing the transferability of the contract or the assignment of benefits;

(10) include the duties of the legal service contract holder;

(11) include the contact information for the

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department, including the department's toll-free number and electronic mail address, as well as a statement that the department regulates the company and the company's sales representatives;

(12) explain the method to be used in resolving the legal service contract holder's complaints and grievances;

(13) explain how legal services may be obtained under the legal service contract;

(14) include a provision stating that no change in the contract is valid until the change has been approved by an executive officer of the company and unless the approval is endorsed or attached to the contract;

(15) include any eligibility and effective date requirements, including a definition of eligible dependents and the effective date of their coverage;

(16) include the conditions under which coverage will terminate;

(17) explain any subrogation arrangements;

(18) contain a payment provision that provides for a grace period of at least 31 days;

(19) include conditions under which contract rates may be modified; and

(20) include any other items required by the executive director as determined by rule.

Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A legal service contract holder may terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's

1 intention of terminating the contract not later than the seventh  
2 day after the date the legal service contract holder receives the  
3 contract.

4 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a  
5 legal service contract holder terminates a legal service contract  
6 in accordance with Section 953.157 and the holder has not sought  
7 legal services under the contract before the contract is  
8 terminated, the contract is void.

9 (b) A legal service contract holder may void the legal  
10 service contract at a later time as provided by the contract.

11 (c) If a legal service contract is voided, the company shall  
12 refund to the legal service contract holder or credit to the account  
13 of the legal service contract holder the full purchase price of the  
14 contract. If the company does not pay the refund or credit the  
15 legal service contract holder's account before the 46th day after  
16 the date the contract is voided, the company is liable to the legal  
17 service contract holder for a penalty each month an amount remains  
18 outstanding. The monthly penalty may not exceed 10 percent of the  
19 amount outstanding.

20 (d) The right to void a legal service contract is not  
21 transferable.

22 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A  
23 company may cancel a legal service contract by mailing a written  
24 notice of cancellation to the legal service contract holder at the  
25 legal service contract holder's last known address according to the  
26 records of the company. The company must mail the notice before the  
27 fifth day preceding the effective date of the cancellation. The

notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The company is not required to provide prior notice of cancellation if the legal service contract is canceled because of:

(1) nonpayment of the consideration for the contract;

(2) a material misrepresentation by the legal service contract holder to the company;

(3) a substantial breach of a duty by the legal service contract holder; or

(4) cancellation of the contract by the legal service contract holder.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company may not use a name that:

(1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) This section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. A company described by this subsection must include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company, a sales representative, or a representative of a sales representative may not, in the company's contracts or marketing:

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1           (1) make, permit, or cause to be made any false or  
2 misleading statement; or

3           (2) deliberately omit a material statement if the  
4 omission would be considered misleading.

5           Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF  
6 ADMINISTRATOR. (a) A company may appoint an administrator or  
7 designate a person to be responsible for:

8           (1) all or any part of the administration or sale of  
9 legal service contracts; and

10           (2) compliance with this chapter.

11           (b) The executive director may adopt rules regarding the  
12 registration of an administrator with the department.

13           [Sections 953.163-953.200 reserved for expansion]

14           SUBCHAPTER E. DISCIPLINARY ACTION

15           Sec. 953.201. DISCIPLINARY ACTION. On a finding that a  
16 ground for disciplinary action exists under this chapter, the  
17 executive director may impose an administrative sanction,  
18 including any administrative penalty, as provided by Chapter 51.

19           Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The  
20 executive director may issue an emergency cease and desist order to  
21 enforce this chapter if the executive director determines that an  
22 emergency exists requiring immediate action to protect the public.

23           (b) The executive director may issue the emergency cease and  
24 desist order without notice and hearing if the executive director  
25 determines that an immediate issuance is necessary under the  
26 circumstances.

27           (c) The executive director shall set the time and place for



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1 a hearing to affirm, modify, or set aside an emergency cease and  
2 desist order that was issued without a hearing.

3 Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
4 executive director may institute an action against a company or  
5 sales representative for injunctive relief under Section 51.352 to  
6 restrain a violation or a threatened violation of this chapter or an  
7 order issued or rule adopted under this chapter.

8 (b) In addition to the injunctive relief provided by  
9 Subsection (a), the executive director may institute an action for  
10 a civil penalty as provided by Section 51.352.

11 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,  
12 51.353, and 51.354 apply to a disciplinary action taken under this  
13 chapter.

14 Sec. 953.205. APPEAL. A person affected by a ruling, order,  
15 decision, or other action of the executive director or department  
16 may appeal by filing a petition in a district court in Travis  
17 County.

18 SECTION 2. Article 5.13-1, Insurance Code, is amended by  
19 adding Subsection (h) to read as follows:

20 (h) An insurer may not issue or renew a prepaid legal  
21 service contract under this article after March 1, 2004.

22 SECTION 3. Subsection (b), Section 951.003, Occupations  
23 Code, is amended to read as follows:

24 (b) A law pertaining to legal service contracts under  
25 Chapter 953 or insurance does not apply to a program under this  
26 chapter.

27 SECTION 4. (a) Chapter 953, Occupations Code, as added by

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1 this Act, applies only to:

2 (1) a legal service contract entered into on or after  
3 March 1, 2004; or

4 (2) a legal service contract entered into before March  
5 1, 2004, that meets the requirements of Subsection (c) of this  
6 section.

7 (b) A person regulated under Chapter 953, Occupations Code,  
8 as added by this Act, is not required to comply with that chapter  
9 until March 1, 2004, but may implement the requirements of that  
10 chapter before March 1, 2004. The failure of a legal service  
11 contract company or other person to comply with Chapter 953,  
12 Occupations Code, as added by this Act, or otherwise to administer a  
13 legal service contract plan in the manner required by that chapter  
14 before March 1, 2004, is not admissible in any court, arbitration,  
15 or alternative dispute resolution proceeding and may not otherwise  
16 be used to prove that the action of any person or the affected legal  
17 service contract was unlawful or otherwise improper.

18 (c) The Texas Department of Licensing and Regulation and the  
19 Texas Department of Insurance may enter into a memorandum of  
20 understanding for a transition plan to transfer the regulation of  
21 legal service contracts from the Texas Department of Insurance to  
22 the Texas Department of Licensing and Regulation. The transition  
23 plan at a minimum shall:

24 (1) allow persons licensed under Chapter 21, Insurance  
25 Code, who have not registered with the Texas Department of  
26 Licensing and Regulation to continue to sell legal service  
27 contracts regulated by the Texas Department of Licensing and

1 Regulation until March 1, 2004; and

2 (2) allow a prepaid legal service contract issued  
3 subject to Article 5.13-1, Insurance Code, to be maintained by the  
4 legal service contract holder if:

5 (A) the insurer that issued the contract or a  
6 related entity is registered with the Texas Department of Licensing  
7 and Regulation under Chapter 953, Occupations Code, as added by  
8 this Act, not later than March 1, 2004;

9 (B) the legal service contract complies with the  
10 requirements established by Chapter 953, Occupations Code, as added  
11 by this Act, for a legal service contract; and

12 (C) any addition or deletion to the contract made  
13 by a legal service contract company registered with the Texas  
14 Department of Licensing and Regulation is approved by the company  
15 and the approval is endorsed or attached to the contract.

16 SECTION 5. This Act takes effect September 1, 2003.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

Revision 1

March 11, 2003

TO: Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
2004	(\$63,188)	\$63,188	(\$6,597)	\$6,597
2005	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2006	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2007	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

Fiscal Year	Change in Number of State Employees from FY 2003
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Texas Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Texas Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, .75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and .25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, .5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 9, 2003

TO: Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **As Introduced**

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The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
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2008	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
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Fiscal Year	Change in Number of State Employees from FY 2003
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## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Texas Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

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It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB

# HOUSE COMMITTEE REPORT

03 MAY 10 PM 1:48  
HOUSE OF REPRESENTATIVES

1<sup>st</sup> Printing

By: Duncan  
(Pitts, Flores)

S.B. No. 597

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain companies that provide  
for-profit legal service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Occupations Code, is  
amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT

COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for  
the administration of a legal service contract. The term includes a  
person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service  
contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting  
attorney to provide or obtain covered legal services for a legal  
service contract holder; and

(C) operates as a for-profit legal service  
contract company.

(3) "Contracting attorney" means an attorney who has  
entered into a contract with a company to provide or obtain covered  
legal services for a legal service contract holder.



1           (4) "Department" means the Texas Department of  
2 Licensing and Regulation.

3           (5) "Executive director" means the executive director  
4 of the Texas Department of Licensing and Regulation or the  
5 executive director's designee.

6           (6) "Financial security" means a surety bond, a  
7 certificate of deposit, or any other item approved by the executive  
8 director.

9           (7) "Legal service contract" means an agreement:  
10           (A) that is entered into for a separately stated  
11 consideration; and

12           (B) under which the company obtains legal  
13 services for a legal service contract holder through a contracting  
14 attorney.

15           (8) "Legal service contract holder" means the person  
16 who purchases or otherwise holds a legal service contract or who is  
17 covered under a group legal service contract.

18           (9) "Person" means an individual or a partnership,  
19 company, corporation, association, or other private group.

20           (10) "Sales representative" means a person who sells  
21 or solicits legal service contracts to a person on behalf of a  
22 company.

23           Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24           (1) a nonprofit legal services corporation under  
25 Chapter 961, Insurance Code;

26           (2) an automobile club supplying services under  
27 Chapter 722, Transportation Code;

1           (3) a prepaid legal services program under Chapter  
2 951;

3           (4) a lawyer referral service under Chapter 952;

4           (5) a retainer contract between an attorney and a  
5 client, and similar contracts made with a group of clients involved  
6 in the same or closely related legal matters; or

7           (6) a contingency fee contract between an attorney and  
8 a client.

9           Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts  
10 of marketing, selling, offering for sale, issuing, making,  
11 proposing to make, and administering a legal service contract that  
12 is regulated by this chapter are exempt from the Insurance Code and  
13 other laws of this state regulating the business of insurance.

14           Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS.

15 (a) An insurer who issues or renews prepaid legal service  
16 contracts under Article 5.13-1, Insurance Code, shall notify the  
17 commissioner of insurance in writing not later than the 60th day  
18 before transferring regulation of the insurer's legal service  
19 contracts from the Texas Department of Insurance to the Texas  
20 Department of Licensing and Regulation. An insurer that complies  
21 with this section is exempt from the requirements of:

22           (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,  
23 and 21.49-2E, Insurance Code; and

24           (2) Chapter 827, Insurance Code.

25           (b) The exemptions described by Subsection (a) begin on the  
26 date the commissioner receives the notice under Subsection (a) and  
27 apply until the insurer registers with the department as required

1 by Section 953.052.

2 Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR.

3 (a) The executive director may investigate a company,  
4 administrator, sales representative, or other person as necessary  
5 to enforce this chapter and protect legal service contract holders  
6 in this state.

7 (b) On request of the executive director, a company or sales  
8 representative shall make the records relevant to the regulation of  
9 legal service contracts in this state available to the executive  
10 director as necessary to enable the executive director to  
11 reasonably determine compliance with this chapter.

12 (c) After contacting the company that has contracted with  
13 the contracting attorney, the executive director may refer a  
14 complaint received by the department concerning the performance of  
15 a contracting attorney to:

16 (1) the State Bar of Texas;

17 (2) the appropriate licensing agency of another  
18 jurisdiction, if applicable; or

19 (3) any person designated by law to receive complaints  
20 from the public concerning the performance of an attorney.

21 (d) The executive director may adopt rules as necessary to  
22 implement this chapter.

23 [Sections 953.006-953.050 reserved for expansion]

24 SUBCHAPTER B. REGISTRATION REQUIREMENTS

25 Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not  
26 operate as a company or sales representative of legal service  
27 contracts sold in this state unless the person is registered with

1 the department. A company's contract may only be sold by a sales  
2 representative who is registered with the department.

3 (b) A person who collects commissions for the sale of legal  
4 service contracts but who does not actively sell or solicit legal  
5 service contracts is not required to register under this  
6 subchapter.

7 Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An  
8 applicant for registration must submit an application to the  
9 department. The application must be in the form prescribed by the  
10 executive director.

11 (b) An application for registration as a company must  
12 include evidence satisfactory to the executive director of  
13 compliance with the applicable financial security requirements  
14 prescribed by Subchapter C.

15 (c) An application for registration as a sales  
16 representative must include a list of the companies for which the  
17 sales representative will sell or solicit legal service contracts.

18 Sec. 953.053. FEES. (a) The executive director shall  
19 develop a tiered fee schedule of annual registration fees under  
20 which a company's registration fee is based on the number of legal  
21 service contracts the company sold in this state during the  
22 preceding 12-month period. The executive director shall set the  
23 amounts of the fees required by this subsection to cover the costs  
24 of administering this chapter.

25 (b) In addition to the annual registration fee required by  
26 Subsection (a), the executive director shall collect from each  
27 company a fee equal to 1.7 percent of the annual price of each legal

1 service contract the company sells in this state. The executive  
2 director shall establish a schedule and procedure for collecting  
3 this fee.

4 (c) To be registered, a company must pay the appropriate  
5 fees required by this section.

6 Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL  
7 SERVICE CONTRACTS SOLD. Information concerning the number of legal  
8 service contracts sold by a company that is submitted under Section  
9 953.053 is a trade secret to which Section 552.110, Government  
10 Code, applies.

11 Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES  
12 REPRESENTATIVES. (a) The executive director may deny an  
13 application from a sales representative who:

14 (1) made a material misrepresentation or fraudulent  
15 statement in the application;

16 (2) has had a license revoked under the Insurance  
17 Code;

18 (3) has had a license suspended or revoked under  
19 Section 82.062, Government Code; or

20 (4) fails to pay the fee required under Subsection  
21 (b).

22 (b) Each registered sales representative shall pay an  
23 annual registration fee in the amount set by the executive director  
24 to cover the costs of administering this chapter.

25 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.  
26 The executive director may adopt rules regarding the procedures and  
27 fees a company or sales representative must follow and pay when

1 requesting a modification to the company's or sales  
2 representative's registration information that is on file with the  
3 department.

4 Sec. 953.057. RENEWAL OF REGISTRATION. The executive  
5 director shall adopt rules for the renewal of a company's or sales  
6 representative's registration, including a rule that addresses  
7 late renewals.

8 [Sections 953.058-953.100 reserved for expansion]

9 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE  
10 CONTRACT COMPANIES

11 Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To  
12 ensure the faithful performance of a company's obligations to its  
13 legal service contract holders, each company must deposit and  
14 maintain a form of financial security with the executive director.  
15 The financial security deposited with the director must maintain at  
16 all times the following market values:

17 (1) a company generating \$300,000 or less in annual  
18 gross revenue in this state from the sale of legal service contracts  
19 in the preceding year shall deposit at least \$50,000 with the  
20 executive director;

21 (2) a company generating more than \$300,000 but less  
22 than \$750,000 in annual gross revenue in this state from the sale of  
23 legal service contracts in the preceding year shall deposit at  
24 least \$75,000 with the executive director; and

25 (3) a company generating \$750,000 or more in annual  
26 gross revenue in this state from the sale of legal service contracts  
27 in the preceding year shall deposit at least \$100,000 with the

1 executive director.

2 (b) For purposes of Subsection (a), if a company that had no  
3 gross revenue in this state from the sale of legal service contracts  
4 in the preceding year previously generated revenue from the sale of  
5 prepaid legal service contracts under Article 5.13-1, Insurance  
6 Code, the company shall deposit an amount of financial security  
7 based on the revenue generated from the sale of prepaid legal  
8 service contracts under the Insurance Code in the preceding year.

9 (c) The department is responsible for the safeguarding of  
10 financial security deposited with the executive director under this  
11 section. Financial security is not subject to taxation and is to be  
12 used exclusively to guarantee the company's performance of its  
13 obligations to its legal service contract holders.

14 (d) The executive director may order an increase in the  
15 amount of financial security required of a company under this  
16 section if the executive director finds that there has been a  
17 substantial change in the company, including an increase in the  
18 amount of fees the company is charging consumers or an increase in  
19 the company's annual gross revenue.

20 (e) Not later than the 30th day after the date the executive  
21 director orders a financial security increase under Subsection (d),  
22 the company may request a hearing on the issue. The executive  
23 director shall hold a hearing not later than the 30th day after the  
24 date a company requests a hearing.

25 (f) Failure of a company to meet the financial security  
26 requirements in this section not later than the 30th day after the  
27 date the executive director issues a final decision in the event of

1 a hearing or the 30th day after the date the period for submitting a  
2 request for a hearing expires constitutes a ground for revocation  
3 of the company's registration.

4 Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

5 (a) If a company's financial security under Section 953.101 is  
6 issued or written for a specified term, not later than the 90th day  
7 before the date the term expires, the company shall:

8 (1) replace the financial security; or

9 (2) notify the executive director of the company's  
10 intention to renew the financial security.

11 (b) If, not later than the 60th day before the date the term  
12 of a company's financial security expires, the executive director  
13 does not receive satisfactory notification of a company's renewal  
14 or replacement of the financial security, the executive director  
15 may draw on the company's financial security to the extent  
16 necessary to ensure that the company's obligations to its legal  
17 service contract holders are met in accordance with this chapter.

18 Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

19 The executive director shall maintain a company's financial  
20 security deposit so long as the company continues to do business in  
21 this state. When a company ceases to do business in this state and  
22 furnishes the executive director with satisfactory proof that the  
23 company has discharged or otherwise adequately met all obligations  
24 to its legal service contract holders in this state, the executive  
25 director shall release the deposited financial security to the  
26 company.

27 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,



1 on behalf of a legal service contract holder injured because of a  
2 company's violation of this chapter, may bring a suit for payment  
3 from the company's financial security deposit held by the executive  
4 director.

5 (b) The state is the only party that may bring suit for  
6 payment from a company's financial security deposit held by the  
7 executive director. This chapter does not create a private right of  
8 action.

9 (c) The state may only seek damages for the cost of the legal  
10 services the company failed to provide to a legal service contract  
11 holder under the terms of the legal service contract.

12 (d) The court shall determine the amount the executive  
13 director shall pay the consumer from the company's financial  
14 security deposit held by the executive director.

15 [Sections 953.105-953.150 reserved for expansion]

16 SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

17 Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not  
18 sell, offer for sale, or issue a legal service contract in this  
19 state unless the company gives the legal service contract holder:

20 (1) a receipt for, or other written evidence of, the  
21 purchase of the contract; and

22 (2) a copy of the legal service contract.

23 (b) A company shall perform the services as stated in the  
24 legal service contract.

25 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may  
26 issue group legal service contracts. The company shall provide a  
27 legal service contract holder who obtains a group contract with a

1 document that describes the company's services and complies with  
2 the requirements of this chapter.

3 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A  
4 contracting attorney must:

5 (1) be licensed in the jurisdiction in which the legal  
6 services are performed;

7 (2) be in good standing with the entity that licenses  
8 attorneys in that jurisdiction; and

9 (3) maintain professional liability and errors and  
10 omissions insurance with minimum annual limits of \$100,000 for each  
11 occurrence and \$300,000 in the aggregate.

12 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES  
13 PROHIBITED. A company may not interfere with the attorney-client  
14 relationship or with the contracting attorney's independent  
15 exercise of professional judgment.

16 Sec. 953.155. COMPANY RECORDS. (a) A company shall  
17 maintain accurate accounts, books, and other records regarding  
18 transactions regulated under this chapter. The company's records  
19 must include:

20 (1) a copy of each unique form of legal service  
21 contract filed with the executive director under Section 953.156;

22 (2) the name and address of each legal service  
23 contract holder;

24 (3) a list of the sales representatives authorized by  
25 the company to market, sell, or offer to sell the company's legal  
26 service contracts;

27 (4) a copy of each contract entered into between the

1 company and a contracting attorney; and

2 (5) a list of complaints the company has received from  
3 legal service contract holders, including the name of the sales  
4 representative involved in the transaction leading to the  
5 complaint.

6 (b) The records required by this section may be maintained  
7 in an electronic medium or through other recordkeeping technology.  
8 If a record is not in a hard copy, the company must be able to  
9 reformat the record into a legible hard copy at the request of the  
10 executive director.

11 (c) Except as provided by Subsection (d), a company shall  
12 retain the records required by this section until at least the  
13 second anniversary of the termination date of the specified period  
14 of coverage under the legal service contract.

15 (d) A company that discontinues business in this state shall  
16 retain its records until the company furnishes the executive  
17 director with proof satisfactory to the executive director that the  
18 company has discharged all obligations to legal service contract  
19 holders in this state.

20 Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED  
21 DISCLOSURES. (a) A legal service contract must be filed with the  
22 executive director before it is marketed, sold, offered for sale,  
23 administered, or issued in this state. Any subsequent endorsement  
24 or attachment to the contract must also be filed with the executive  
25 director before the endorsement or attachment is delivered to legal  
26 service contract holders.

27 (b) A legal service contract marketed, sold, offered for

sale, administered, or issued in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) include the name and full address of the company;

(3) include the purchase price of the contract and the terms under which the contract is sold;

(4) include the terms and restrictions governing cancellation of the contract by the company or the legal service contract holder;

(5) identify:

(A) any administrator, if the administrator is not the company;

(B) the sales representative; and

(C) the name of the legal service contract holder;

(6) include the amount of any deductible or copayment;

(7) specify the legal services and other benefits to be provided under the contract, and any limitation, exception, or exclusion;

(8) specify the legal services, if any, for which the company will provide reimbursement and the amount of that reimbursement;

(9) specify any restriction governing the transferability of the contract or the assignment of benefits;

(10) include the duties of the legal service contract holder;

(11) include the contact information for the

1 department, including the department's toll-free number and  
2 electronic mail address, as well as a statement that the department  
3 regulates the company and the company's sales representatives;

4 (12) explain the method to be used in resolving the  
5 legal service contract holder's complaints and grievances;

6 (13) explain how legal services may be obtained under  
7 the legal service contract;

8 (14) include a provision stating that no change in the  
9 contract is valid until the change has been approved by an executive  
10 officer of the company and unless the approval is endorsed or  
11 attached to the contract;

12 (15) include any eligibility and effective date  
13 requirements, including a definition of eligible dependents and the  
14 effective date of their coverage;

15 (16) include the conditions under which coverage will  
16 terminate;

17 (17) explain any subrogation arrangements;

18 (18) contain a payment provision that provides for a  
19 grace period of at least 31 days;

20 (19) include conditions under which contract rates may  
21 be modified; and

22 (20) include any other items required by the executive  
23 director as determined by rule.

24 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A  
25 legal service contract holder may terminate the legal service  
26 contract if the legal service contract holder provides the company  
27 with written notice of the legal service contract holder's

1 intention of terminating the contract not later than the seventh  
2 day after the date the legal service contract holder receives the  
3 contract.

4 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a  
5 legal service contract holder terminates a legal service contract  
6 in accordance with Section 953.157 and the holder has not sought  
7 legal services under the contract before the contract is  
8 terminated, the contract is void.

9 (b) A legal service contract holder may void the legal  
10 service contract at a later time as provided by the contract.

11 (c) If a legal service contract is voided, the company shall  
12 refund to the legal service contract holder or credit to the account  
13 of the legal service contract holder the full purchase price of the  
14 contract. If the company does not pay the refund or credit the  
15 legal service contract holder's account before the 46th day after  
16 the date the contract is voided, the company is liable to the legal  
17 service contract holder for a penalty each month an amount remains  
18 outstanding. The monthly penalty may not exceed 10 percent of the  
19 amount outstanding.

20 (d) The right to void a legal service contract is not  
21 transferable.

22 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A  
23 company may cancel a legal service contract by mailing a written  
24 notice of cancellation to the legal service contract holder at the  
25 legal service contract holder's last known address according to the  
26 records of the company. The company must mail the notice before the  
27 fifth day preceding the effective date of the cancellation. The

1 notice must state the effective date of the cancellation and the  
2 reason for the cancellation.

3 (b) The company is not required to provide prior notice of  
4 cancellation if the legal service contract is canceled because of:

5 (1) nonpayment of the consideration for the contract;

6 (2) a material misrepresentation by the legal service  
7 contract holder to the company;

8 (3) a substantial breach of a duty by the legal service  
9 contract holder; or

10 (4) cancellation of the contract by the legal service  
11 contract holder.

12 Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company  
13 may not use a name that:

14 (1) includes "insurance," "casualty," "surety," or  
15 "mutual" or any other word descriptive of the insurance, casualty,  
16 or surety business; or

17 (2) is deceptively similar to the name or description  
18 of an insurance or surety corporation or to the name of any other  
19 company.

20 (b) This section does not apply to a company that, before  
21 September 1, 2003, included a word prohibited under this section in  
22 its name. A company described by this subsection must include in  
23 each legal service contract a statement substantially similar to  
24 the following: "This agreement is not an insurance contract."

25 Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,  
26 a sales representative, or a representative of a sales  
27 representative may not, in the company's contracts or marketing:

1           (1) make, permit, or cause to be made any false or  
2 misleading statement; or

3           (2) deliberately omit a material statement if the  
4 omission would be considered misleading.

5           Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF  
6 ADMINISTRATOR. (a) A company may appoint an administrator or  
7 designate a person to be responsible for:

8           (1) all or any part of the administration or sale of  
9 legal service contracts; and

10           (2) compliance with this chapter.

11           (b) The executive director may adopt rules regarding the  
12 registration of an administrator with the department.

13           [Sections 953.163-953.200 reserved for expansion]

14           SUBCHAPTER E. DISCIPLINARY ACTION

15           Sec. 953.201. DISCIPLINARY ACTION. On a finding that a  
16 ground for disciplinary action exists under this chapter, the  
17 executive director may impose an administrative sanction,  
18 including any administrative penalty, as provided by Chapter 51.

19           Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The  
20 executive director may issue an emergency cease and desist order to  
21 enforce this chapter if the executive director determines that an  
22 emergency exists requiring immediate action to protect the public.

23           (b) The executive director may issue the emergency cease and  
24 desist order without notice and hearing if the executive director  
25 determines that an immediate issuance is necessary under the  
26 circumstances.

27           (c) The executive director shall set the time and place for



1 a hearing to affirm, modify, or set aside an emergency cease and  
2 desist order that was issued without a hearing.

3 Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
4 executive director may institute an action against a company or  
5 sales representative for injunctive relief under Section 51.352 to  
6 restrain a violation or a threatened violation of this chapter or an  
7 order issued or rule adopted under this chapter.

8 (b) In addition to the injunctive relief provided by  
9 Subsection (a), the executive director may institute an action for  
10 a civil penalty as provided by Section 51.352.

11 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,  
12 51.353, and 51.354 apply to a disciplinary action taken under this  
13 chapter.

14 Sec. 953.205. APPEAL. A person affected by a ruling, order,  
15 decision, or other action of the executive director or department  
16 may appeal by filing a petition in a district court in Travis  
17 County.

18 SECTION 2. Article 5.13-1, Insurance Code, is amended by  
19 adding Subsection (h) to read as follows:

20 (h) An insurer may not issue or renew a prepaid legal  
21 service contract under this article after March 1, 2004.

22 SECTION 3. Subsection (b), Section 951.003, Occupations  
23 Code, is amended to read as follows:

24 (b) A law pertaining to legal service contracts under  
25 Chapter 953 or insurance does not apply to a program under this  
26 chapter.

27 SECTION 4. (a) Chapter 953, Occupations Code, as added by

1 this Act, applies only to:

2 (1) a legal service contract entered into on or after  
3 March 1, 2004; or

4 (2) a legal service contract entered into before March  
5 1, 2004, that meets the requirements of Subsection (c) of this  
6 section.

7 (b) A person regulated under Chapter 953, Occupations Code,  
8 as added by this Act, is not required to comply with that chapter  
9 until March 1, 2004, but may implement the requirements of that  
10 chapter before March 1, 2004. The failure of a legal service  
11 contract company or other person to comply with Chapter 953,  
12 Occupations Code, as added by this Act, or otherwise to administer a  
13 legal service contract plan in the manner required by that chapter  
14 before March 1, 2004, is not admissible in any court, arbitration,  
15 or alternative dispute resolution proceeding and may not otherwise  
16 be used to prove that the action of any person or the affected legal  
17 service contract was unlawful or otherwise improper.

18 (c) The Texas Department of Licensing and Regulation and the  
19 Texas Department of Insurance may enter into a memorandum of  
20 understanding for a transition plan to transfer the regulation of  
21 legal service contracts from the Texas Department of Insurance to  
22 the Texas Department of Licensing and Regulation. The transition  
23 plan at a minimum shall:

24 (1) allow persons licensed under Chapter 21, Insurance  
25 Code, who have not registered with the Texas Department of  
26 Licensing and Regulation to continue to sell legal service  
27 contracts regulated by the Texas Department of Licensing and

1 Regulation until March 1, 2004; and

2 (2) allow a prepaid legal service contract issued  
3 subject to Article 5.13-1, Insurance Code, to be maintained by the  
4 legal service contract holder if:

5 (A) the insurer that issued the contract or a  
6 related entity is registered with the Texas Department of Licensing  
7 and Regulation under Chapter 953, Occupations Code, as added by  
8 this Act, not later than March 1, 2004;

9 (B) the legal service contract complies with the  
10 requirements established by Chapter 953, Occupations Code, as added  
11 by this Act, for a legal service contract; and

12 (C) any addition or deletion to the contract made  
13 by a legal service contract company registered with the Texas  
14 Department of Licensing and Regulation is approved by the company  
15 and the approval is endorsed or attached to the contract.

16 SECTION 5. This Act takes effect September 1, 2003.

COMMITTEE AMENDMENT NO. 1

Amend S.B. 597 as follows:

(1) On page 10, between lines 14 and 15, insert the following:

Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS.

(a) The executive director shall annually review:

(1) the audited financial statements of a company; and

(2) a certified statement describing the company's reserves, if any.

(b) The statement described by Subsection (a)(2) must be made by an actuary who is a member in good standing of the American Academy of Actuaries.

(c) After reviewing the information described by Subsection (a), the executive director may require a company to maintain certain reserves in order for the company to obtain or maintain the company's registration.

(2) On page 10, line 15, strike "953.105" and substitute "953.106".

Eissler

# COMMITTEE REPORT

The Honorable Tom Craddick  
Speaker of the House of Representatives

May 1, 2003  
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred SB597 have had the same under consideration and beg to report back with the recommendation that it

- ( ) do pass, without amendment.  
☒ do pass, with amendment(s).  
 ( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.  
☒ yes ( ) no A fiscal note was requested.  
 ( ) yes ☒ no A criminal justice policy impact statement was requested.  
 ( ) yes ☒ no An equalized educational funding impact statement was requested.  
 ( ) yes ☒ no An actuarial analysis was requested.  
 ( ) yes ☒ no A water development policy impact statement was requested.  
 ( ) yes ☒ no A tax equity note was requested.  
 ( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor Pitts

Joint Sponsors: Flores / /

Co-Sponsors: \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Flores, Chair	X			
Hamilton, Vice-chair	X			
Driver				X
Eissler	X			
Goolsby	X			
Homer				X
Jones, D.	X			
Raymond				X
Wise				X

Total 5 aye  
0 nay  
0 present, not voting  
4 absent

Kawth  
CHAIR

## **BILL ANALYSIS**

S.B. 597  
By: Duncan  
Licensing & Administrative Procedures  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

Currently, legal service contracts are regulated by the Texas Department of Insurance. However, the contracts are not considered to be traditional insurance products.

SB 597 transfers regulation of for-profit legal service contracts to the Texas Department of Licensing and Regulation (TDLR). TDLR has broad enforcement powers over companies and sales representatives who sell legal service contracts. Companies and sales representatives that sell legal service contracts are required to register with TDLR, to post financial security, maintain books and records, and include certain language in contracts.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Sections 953.005, 953.056, 953.057, 953.156 and 953.162, Title 5B, Occupations Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Title 5B, Occupations Code, by adding Chapter 953, as follows: CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES SUBCHAPTER A. GENERAL PROVISIONS Sec. 953.001. DEFINITIONS. Defines "administrator," "company," "contracting attorney," "department," "executive director," "financial security," "legal service contract," "legal service contract holder," "person," and "sales representative."

Sec. 953.002. EXEMPTIONS. Provides a list of entities and contracts that this chapter does not apply to.

Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. Provides that the sale of legal service contracts under this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a) Requires an insurer who issues or renews prepaid legal service contracts under Article 5.13-1 (Legal Service Contracts), Insurance Code, to notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. Provides that an insurer that complies with this section is exempt from the requirements of Articles 21.49-2 (Declination, Cancellation, and Nonrenewal of Certain Policies) 21.49-2A (Cancellation and Nonrenewal of Certain Liability Insurance Coverage), 21.49-2B (Cancellation and Nonrenewal of Certain Property and Casualty Policies), 21.49-2D (Prohibition on Certain Cancellations and Nonrenewals), and 21.49-2E (Requirements for Written Statement of Reason for Cancellation, Declination, or Renewal), and Chapter 827 (Withdrawal and Restriction Plans), Insurance Code. (b) Provides that the exemptions described by Subsection (a) begin on the date the commissioner receives the notice under Subsection (a) and apply until the insurer registers with the department as required by Section 953.052.

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) Authorizes the executive director of the Texas Department of Licensing and Regulation (executive director) to investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state. (b) Requires a company or sales representative,

on request of the executive director, to make the records relevant to the regulation of legal service contracts in this state available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter. (c) Authorizes the executive director, after contacting the company that has contracted with the contracting attorney, to refer a complaint received by the department concerning the performance of a contracting attorney to the State Bar of Texas, the appropriate licensing agency of another jurisdiction, if applicable or any person designated by law to receive complaints from the public concerning the performance of an attorney. (d) Authorizes the executive director to adopt rules as necessary to implement this chapter. [Reserves Sections 953.006-953.050 for expansion]

**SUBCHAPTER B. REGISTRATION REQUIREMENTS** Sec. 953.051. **REGISTRATION REQUIRED.** (a) Prohibits a person to operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with the department. Authorizes a company's contract to only be sold by a sales representative who is registered with the department. (b) Provides that a person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. **APPLICATION FOR REGISTRATION.** (a) Requires an applicant for registration to submit an application to the department. Requires the application to be in a form prescribed by the executive director. (b) Provides that an application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C. (c) Requires an application for registration as a sales representative to include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. **FEES.** (a) Requires the executive director to develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. Requires the executive director to set the amounts of the fees required by this subsection to cover the costs of administering this chapter. (b) Requires the executive director, in addition to the annual registration fee required by Subsection (a), to collect from each company a fee equal to 1.7 percent of the annual price of each legal service contract the company sells in this state. Requires the executive director to establish a schedule and procedure for collecting this fee. (c) Requires a company to pay the appropriate fees required by this section to be registered.

Sec. 953.054. **INFORMATION CONCERNING NUMBER OF LEGAL SERVICE CONTRACTS SOLD.** Provides that information concerning the number of legal service contracts sold by a company that is submitted under Section 953.053 is a trade secret to which Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), Government Code, applies.

Sec. 953.055. **ADDITIONAL REQUIREMENTS FOR SALES REPRESENTATIVES.** (a) Authorizes the executive director to deny an application from a sales representative who commits certain acts. (b) Requires each registered sales representative to pay an annual registration fee in the amount set by the executive director to cover the costs of administering this chapter.

Sec. 953.056. **MODIFICATION OF REGISTRATION INFORMATION.** Authorizes the executive director to adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Sec. 953.057. **RENEWAL OF REGISTRATION.** Requires the executive director to adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals. [Reserves Sections 953.058-953.100 for expansion]

**SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES** Sec. 953.101. **FINANCIAL SECURITY REQUIREMENTS.** (a) Requires each company to deposit and maintain a form of financial security with the executive director. Requires the financial security deposited with the director to maintain certain market values at all times. (b) Requires a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13-1, Insurance Code, to deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts under the Insurance

Code in the preceding year. (c) Provides that the department is responsible for the safeguarding of financial security deposited with the executive director under this section. Provides that financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders. (d) Authorizes the executive director to order an increase in the amount of financial security required of a company under this section if the executive director finds that there has been a substantial change in a company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue. (e) Authorizes a company, not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), to request a hearing on the issue. Requires the executive director to hold a hearing not later than the 30th day after the date a company requests a hearing. (f) Provides that if a company does not meet the financial security requirements within a specified time a company's registration may be revoked.

**Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.** (a) Requires a company whose financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, to replace the financial security or notify the executive director of the company's intention to renew the financial security. (b) Authorizes the executive director to draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter if, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security.

**Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.** Requires the executive director to maintain a company's financial security deposit so long as the company continues to do business in this state. Requires the executive director to release the deposited financial security to the company when a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state.

**Sec. 953.104. SUIT ON FINANCIAL SECURITY.** (a) Authorizes the state, on behalf of a legal service contract holder injured because of a company's violation of this chapter, to bring a suit for payment from the company's financial security deposit held by the executive director. (b) Provides that the state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. Provides that this chapter does not create a private right of action. (c) Authorizes the state to only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract. (d) Requires the court to determine the amount the executive director is required to pay the consumer from the company's financial security deposit held by the executive director. [Reserves Sections 953.105-953.150 for expansion]

**SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES** **Sec. 953.151. COMPANY REQUIREMENTS.** (a) Prohibits a company from selling, offering for sale, or issuing a legal service contract in this state unless the company gives the legal service contract holder a receipt for, or other written evidence of, the purchase of the contract and a copy of the legal service contract. (b) Requires a company to perform the services as stated in the legal service contract.

**Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS.** Authorizes a company to issue group legal service contracts. Requires a company to provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.

**Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS.** Requires a contracting attorney to be licensed in the jurisdiction in which the legal services are performed, be in good standing with the entity that licenses attorneys in that jurisdiction and maintain professional liability and errors and omissions insurance with minimum annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

**Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED.** Prohibits a company from interfering with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

**Sec. 953.155. COMPANY RECORDS.** (a) Requires a company to maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. Requires a company's



records to include certain information. (b) Authorizes the records required by this section to be maintained in an electronic medium or through other recordkeeping technology. Requires a company to be able to reformat the record into a legible hard copy at the request of the executive director, if a record is not in a hard copy. (c) Requires a company to retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract, except as provided by Subsection (d). (d) Requires a company that discontinues business in this state to retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the provider has discharged all obligations to legal service contract holders in this state.

**Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES.** (a) Requires a legal service contract to be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Requires any subsequent endorsement or attachment to the contract to also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders. (b) Requires a legal service contract marketed, sold, offered for sale, administered, or issued in this state to meet certain requirements.

**Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT.** Authorizes a legal service contract holder to terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

**Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT.** (a) Provides that if a legal service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void. (b) Authorizes a legal service contract holder to void the legal service contract at a later time as provided by the contract. (c) Requires a company to refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the contract, if a legal service contract is voided. Provides that if the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. Provides that the monthly penalty may not exceed 10 percent of the amount outstanding. (d) Provides that the right to void a legal service contract is not transferable.

**Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT.** (a) Authorizes a company to cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. Requires a company to mail the notice before the fifth day preceding the effective date of the cancellation. Requires the notice to state the effective date of the cancellation and the reason for the cancellation. (b) Provides that a company is not required to provide prior notice of cancellation if the legal service contract is canceled due to certain circumstances.

**Sec. 953.160. LIMITATIONS ON COMPANY NAME.** (a) Prohibits a company from using a name that includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business or is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company. (b) Provides that this section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. Requires a company described by this subsection to include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

**Sec. 953.161. MISLEADING STATEMENTS PROHIBITED.** Prohibits a company, a sales representative, or a representative of a sales representative, in the company's contracts or marketing to make, permit, or cause to be made any false or misleading statement or deliberately omit a material statement if the omission would be considered misleading.

**Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR.** (a) Authorizes a company to appoint an administrator or designate a person to be responsible for all or any part of the administration or sale of legal service contracts and compliance with this chapter. (b) Authorizes the executive director to adopt rules regarding the registration of an administrator with the department. [Reserves Sections 953.163-953.200 for expansion]

**SUBCHAPTER E. DISCIPLINARY ACTION** **Sec. 953.201. DISCIPLINARY ACTION.** Authorizes

the executive director to impose an administrative sanction, including any administrative penalty, as provided by Chapter 51 on a finding that a ground for disciplinary action exists under this chapter.

**Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER.** (a) Authorizes the executive director to issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public. (b) Authorizes the executive director to issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances. (c) Requires the executive director to set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

**Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY.** (a) Authorizes the executive director to institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter. (b) Authorizes the executive director to institute an action for a civil penalty as provided by Section 51.352, in addition to the injunctive relief provided by Subsection (a).

**Sec. 953.204. ADMINISTRATIVE PROCEDURE.** Provides that Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.

**Sec. 953.205. APPEAL.** Authorizes a person affected by a ruling, order, decision, or other action of the executive director or department to appeal by filing a petition in a district court in Travis County.

**SECTION 2.** Amends Article 5.13-1, Insurance Code, by adding Subsection (h) to prohibit an insurer from issuing a prepaid legal service contract under this article after March 1, 2004.

**SECTION 3.** Amends Section 951.003(b), Occupations Code, to provide that a law pertaining to legal service contracts under Chapter 953 or insurance does not apply to a program under this chapter.

**SECTION 4.** (a) Provides that Chapter 953, Occupations Code, as added by this Act, applies only to a legal service contract entered into on or after March 1, 2004, or a legal service contract entered into before March 1, 2004, that meets the requirements of Subsection (c) of this section. (b) Provides that a person regulated under Chapter 953, Occupations Code, as added by this Act, is not required to comply with that chapter until March 1, 2004, but may implement the requirements of that chapter before March 1, 2004. Provides that the failure of a legal service contract company or other person to comply with Chapter 953, Occupations Code, as added by this Act, or otherwise to administer a legal service contract plan in the manner required by that chapter before March 1, 2004, is not admissible in any court, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected legal service contract was unlawful or otherwise improper. (c) Authorizes the Texas Department of Licensing and Regulation and the Texas Department of Insurance to enter into a memorandum of understanding for a transition plan to transfer the regulation of legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. Requires the transition plan to meet certain minimum standards.

#### **EFFECTIVE DATE**

September 1, 2003.

#### **EXPLANATION OF AMENDMENTS**

Committee Amendment No. 1 adds Section 953.105. **ADDITIONAL FINANCIAL SECURITY REQUIREMENTS** to provide additional requirements relating to financial security of for-profit legal service contracts. The bill outlines provisions to require the executive director to review the financial statements of a company; to certify a statement regarding the company's reserves. The statement must be made by an actuary who is in good standing of the American Academy of Actuaries; the executive director may require a company to maintain certain reserves in order for the company to obtain or maintain the company's registration.

Renumbers sections set aside for expansion of the code accordingly.

## SUMMARY OF COMMITTEE ACTION

SB 597

May 1, 2003                      8:00AM

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Considered in public hearing

Amendment(s) considered in committee

Testimony taken in committee (See attached witness list.)

Reported favorably as amended

WITNESS LIST

SB 597

HOUSE COMMITTEE REPORT

Licensing & Administrative Procedures Committee

May 1, 2003 - 8:00AM

For: Pinson, Kathleen S. (Pre-Paid Legal Services, Inc.)  
Against: Finney, David (Self)  
Monnin, Gary P. (Texas Legal Protection Plan)  
Richter, Kellis (Self and Texas Legal Protection Plan)  
Rische, Ray (Self and Texas Legal Protection Plan)

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**May 6, 2003**

**TO:** Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: SB597** by Duncan (relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties. ), **Committee Report 2nd House, As Amended**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, Committee Report 2nd House, As Amended: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain/(Loss) from GENERAL REVENUE FUND 1</b>	<b>Probable Savings/ (Cost) from GENERAL REVENUE FUND 1</b>	<b>Probable Revenue Gain/(Loss) from DEPT INS OPERATING ACCT 36</b>	<b>Probable Savings/ (Cost) from DEPT INS OPERATING ACCT 36</b>
2004	(\$63,188)	\$63,188	(\$6,597)	\$6,597
2005	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2006	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2007	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2003</b>
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

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## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Department of Insurance (TDI) to the Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, 0.75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and 0.25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, 0.5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 454 Department of Insurance

**LBB Staff:** JK, JRO, RR, RT, RB

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**Revision 1**

**March 11, 2003**

**TO: Honorable Bill Ratliff, Chair, Senate Committee on State Affairs**

**FROM: John Keel, Director, Legislative Budget Board**

**IN RE: SB597 by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds for SB597, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2005.**

**The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.**

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

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2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2003</b>
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

10

## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Texas Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Texas Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, .75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and .25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, .5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

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## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**March 9, 2003**

**TO:** Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, As Introduced: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
2004	\$63,188	(\$63,188)	(\$6,597)	\$6,597
2005	\$54,338	(\$54,338)	(\$6,597)	\$6,597
2006	\$54,338	(\$54,338)	(\$6,597)	\$6,597
2007	\$54,338	(\$54,338)	(\$6,597)	\$6,597
2008	\$54,338	(\$54,338)	(\$6,597)	\$6,597

Fiscal Year	Change in Number of State Employees from FY 2003
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

12

## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Texas Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Texas Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, .75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and .25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, .5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB

LIST OF HOUSE AMENDMENTS PREVIOUSLY UNDER CONSIDERATION

SB597-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Eissler	Comm Amdt	Adopted



ADOPTED

MAY 23 2003

Robert Hines  
Chief Clerk  
House of Representatives

Floor Amendment : 1

COMMITTEE AMENDMENT NO. 1

BY: Eissler

1 Amend S.B. 597 as follows:

2 (1) On page 10, between lines 13 and 14, insert the  
3 following:

4 Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS.

5 (a) The executive director shall annually review:

6 (1) the audited financial statements of a company; and

7 (2) a certified statement describing the company's  
8 reserves, if any.

9 (b) The statement described by Subsection (a)(2) must be  
10 made by an actuary who is a member in good standing of the American  
11 Academy of Actuaries.

12 (c) After reviewing the information described by Subsection  
13 (a), the executive director may require a company to maintain  
14 certain reserves in order for the company to obtain or maintain the  
15 company's registration.

16 (2) On page 10, line 15, strike "953.105" and substitute  
17 "953.106".

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

SB597-Third Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Pitts	Amendment	Adopted

ADOPTED

MAY 25 2003

3<sup>rd</sup> READING

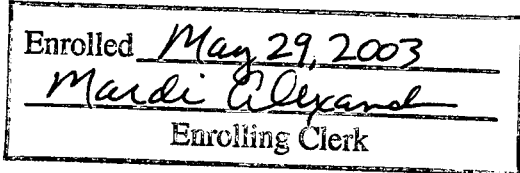
Robert H. Hines  
Chief Clerk  
House of Representatives

FLOOR AMENDMENT NO. 1

BY: Pitts

1 Amend S.B. No. 597 in SECTION 1 of the bill by striking  
2 proposed Section 953.053(b), Occupations Code (house committee  
3 printing, page 5, line 25<sup>4</sup>, through page 6, line 3<sup>2</sup>), and substituting  
4 the following:

5 (b) In addition to the annual registration fee required by  
6 Subsection (a), the executive director shall annually collect from  
7 each company a fee equal to the difference between an amount equal  
8 to 1.7 percent of the amount a company collects for legal service  
9 contracts sold by the company in this state in the current year and  
10 the amount the company paid to the state in franchise taxes in the  
11 same year. The executive director shall establish a schedule and  
12 procedure for collecting this fee.



S.B. No. 597

AN ACT

relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Occupations Code, is amended by adding Chapter 953 to read as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for the administration of a legal service contract. The term includes a person responsible for any filing required by this chapter.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

1           (4) "Department" means the Texas Department of  
2 Licensing and Regulation.

3           (5) "Executive director" means the executive director  
4 of the Texas Department of Licensing and Regulation or the  
5 executive director's designee.

6           (6) "Financial security" means a surety bond, a  
7 certificate of deposit, or any other item approved by the executive  
8 director.

9           (7) "Legal service contract" means an agreement:

10           (A) that is entered into for a separately stated  
11 consideration; and

12           (B) under which the company obtains legal  
13 services for a legal service contract holder through a contracting  
14 attorney.

15           (8) "Legal service contract holder" means the person  
16 who purchases or otherwise holds a legal service contract or who is  
17 covered under a group legal service contract.

18           (9) "Person" means an individual or a partnership,  
19 company, corporation, association, or other private group.

20           (10) "Sales representative" means a person who sells  
21 or solicits legal service contracts to a person on behalf of a  
22 company.

23           Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24           (1) a nonprofit legal services corporation under  
25 Chapter 961, Insurance Code;

26           (2) an automobile club supplying services under  
27 Chapter 722, Transportation Code;



1           (3) a prepaid legal services program under Chapter  
2 951;

3           (4) a lawyer referral service under Chapter 952;

4           (5) a retainer contract between an attorney and a  
5 client, and similar contracts made with a group of clients involved  
6 in the same or closely related legal matters; or

7           (6) a contingency fee contract between an attorney and  
8 a client.

9           Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts  
10 of marketing, selling, offering for sale, issuing, making,  
11 proposing to make, and administering a legal service contract that  
12 is regulated by this chapter are exempt from the Insurance Code and  
13 other laws of this state regulating the business of insurance.

14           Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS.  
15 (a) An insurer who issues or renews prepaid legal service  
16 contracts under Article 5.13-1, Insurance Code, shall notify the  
17 commissioner of insurance in writing not later than the 60th day  
18 before transferring regulation of the insurer's legal service  
19 contracts from the Texas Department of Insurance to the Texas  
20 Department of Licensing and Regulation. An insurer that complies  
21 with this section is exempt from the requirements of:

22           (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,  
23 and 21.49-2E, Insurance Code; and

24           (2) Chapter 827, Insurance Code.

25           (b) The exemptions described by Subsection (a) begin on the  
26 date the commissioner receives the notice under Subsection (a) and  
27 apply until the insurer registers with the department as required

1 by Section 953.052.

2 Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR.

3 (a) The executive director may investigate a company,  
4 administrator, sales representative, or other person as necessary  
5 to enforce this chapter and protect legal service contract holders  
6 in this state.

7 (b) On request of the executive director, a company or sales  
8 representative shall make the records relevant to the regulation of  
9 legal service contracts in this state available to the executive  
10 director as necessary to enable the executive director to  
11 reasonably determine compliance with this chapter.

12 (c) After contacting the company that has contracted with  
13 the contracting attorney, the executive director may refer a  
14 complaint received by the department concerning the performance of  
15 a contracting attorney to:

16 (1) the State Bar of Texas;

17 (2) the appropriate licensing agency of another  
18 jurisdiction, if applicable; or

19 (3) any person designated by law to receive complaints  
20 from the public concerning the performance of an attorney.

21 (d) The executive director may adopt rules as necessary to  
22 implement this chapter.

23 [Sections 953.006-953.050 reserved for expansion]

24 SUBCHAPTER B. REGISTRATION REQUIREMENTS

25 Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not  
26 operate as a company or sales representative of legal service  
27 contracts sold in this state unless the person is registered with

the department. A company's contract may only be sold by a sales representative who is registered with the department.

(b) A person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the department. The application must be in the form prescribed by the executive director.

(b) An application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) An application for registration as a sales representative must include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. FEES. (a) The executive director shall develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. The executive director shall set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) In addition to the annual registration fee required by Subsection (a), the executive director shall annually collect from each company a fee equal to the difference between an amount equal

1 to 1.7 percent of the amount a company collects for legal service  
2 contracts sold by the company in this state in the current year and  
3 the amount the company paid to the state in franchise taxes in the  
4 same year. The executive director shall establish a schedule and  
5 procedure for collecting this fee.

6 (c) To be registered, a company must pay the appropriate  
7 fees required by this section.

8 Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL  
9 SERVICE CONTRACTS SOLD. Information concerning the number of legal  
10 service contracts sold by a company that is submitted under Section  
11 953.053 is a trade secret to which Section 552.110, Government  
12 Code, applies.

13 Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES  
14 REPRESENTATIVES. (a) The executive director may deny an  
15 application from a sales representative who:

16 (1) made a material misrepresentation or fraudulent  
17 statement in the application;

18 (2) has had a license revoked under the Insurance  
19 Code;

20 (3) has had a license suspended or revoked under  
21 Section 82.062, Government Code; or

22 (4) fails to pay the fee required under Subsection  
23 (b).

24 (b) Each registered sales representative shall pay an  
25 annual registration fee in the amount set by the executive director  
26 to cover the costs of administering this chapter.

27 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.

The executive director may adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Sec. 953.057. RENEWAL OF REGISTRATION. The executive director shall adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals.

[Sections 953.058-953.100 reserved for expansion]

SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the faithful performance of a company's obligations to its legal service contract holders, each company must deposit and maintain a form of financial security with the executive director. The financial security deposited with the director must maintain at all times the following market values:

(1) a company generating \$300,000 or less in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$50,000 with the executive director;

(2) a company generating more than \$300,000 but less than \$750,000 in annual gross revenue in this state from the sale of legal service contracts in the preceding year shall deposit at least \$75,000 with the executive director; and

(3) a company generating \$750,000 or more in annual

1 gross revenue in this state from the sale of legal service contracts  
2 in the preceding year shall deposit at least \$100,000 with the  
3 executive director.

4 (b) For purposes of Subsection (a), if a company that had no  
5 gross revenue in this state from the sale of legal service contracts  
6 in the preceding year previously generated revenue from the sale of  
7 prepaid legal service contracts under Article 5.13-1, Insurance  
8 Code, the company shall deposit an amount of financial security  
9 based on the revenue generated from the sale of prepaid legal  
10 service contracts under the Insurance Code in the preceding year.

11 (c) The department is responsible for the safeguarding of  
12 financial security deposited with the executive director under this  
13 section. Financial security is not subject to taxation and is to be  
14 used exclusively to guarantee the company's performance of its  
15 obligations to its legal service contract holders.

16 (d) The executive director may order an increase in the  
17 amount of financial security required of a company under this  
18 section if the executive director finds that there has been a  
19 substantial change in the company, including an increase in the  
20 amount of fees the company is charging consumers or an increase in  
21 the company's annual gross revenue.

22 (e) Not later than the 30th day after the date the executive  
23 director orders a financial security increase under Subsection (d),  
24 the company may request a hearing on the issue. The executive  
25 director shall hold a hearing not later than the 30th day after the  
26 date a company requests a hearing.

27 (f) Failure of a company to meet the financial security

requirements in this section not later than the 30th day after the date the executive director issues a final decision in the event of a hearing or the 30th day after the date the period for submitting a request for a hearing expires constitutes a ground for revocation of the company's registration.

Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

(a) If a company's financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, the company shall:

(1) replace the financial security; or

(2) notify the executive director of the company's intention to renew the financial security.

(b) If, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security, the executive director may draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter.

Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

The executive director shall maintain a company's financial security deposit so long as the company continues to do business in this state. When a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state, the executive director shall release the deposited financial security to the

1 company.

2 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,  
3 on behalf of a legal service contract holder injured because of a  
4 company's violation of this chapter, may bring a suit for payment  
5 from the company's financial security deposit held by the executive  
6 director.

7 (b) The state is the only party that may bring suit for  
8 payment from a company's financial security deposit held by the  
9 executive director. This chapter does not create a private right of  
10 action.

11 (c) The state may only seek damages for the cost of the legal  
12 services the company failed to provide to a legal service contract  
13 holder under the terms of the legal service contract.

14 (d) The court shall determine the amount the executive  
15 director shall pay the consumer from the company's financial  
16 security deposit held by the executive director.

17 Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS.

18 (a) The executive director shall annually review:

19 (1) the audited financial statements of a company; and  
20 (2) a certified statement describing the company's  
21 reserves, if any.

22 (b) The statement described by Subsection (a)(2) must be  
23 made by an actuary who is a member in good standing of the American  
24 Academy of Actuaries.

25 (c) After reviewing the information described by Subsection  
26 (a), the executive director may require a company to maintain  
27 certain reserves in order for the company to obtain or maintain the



1 company's registration.

2 [Sections 953.106-953.150 reserved for expansion]

3 SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

4 Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not  
5 sell, offer for sale, or issue a legal service contract in this  
6 state unless the company gives the legal service contract holder:

7 (1) a receipt for, or other written evidence of, the  
8 purchase of the contract; and

9 (2) a copy of the legal service contract.

10 (b) A company shall perform the services as stated in the  
11 legal service contract.

12 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may  
13 issue group legal service contracts. The company shall provide a  
14 legal service contract holder who obtains a group contract with a  
15 document that describes the company's services and complies with  
16 the requirements of this chapter.

17 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A  
18 contracting attorney must:

19 (1) be licensed in the jurisdiction in which the legal  
20 services are performed;

21 (2) be in good standing with the entity that licenses  
22 attorneys in that jurisdiction; and

23 (3) maintain professional liability and errors and  
24 omissions insurance with minimum annual limits of \$100,000 for each  
25 occurrence and \$300,000 in the aggregate.

26 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES  
27 PROHIBITED. A company may not interfere with the attorney-client

1 relationship or with the contracting attorney's independent  
2 exercise of professional judgment.

3 Sec. 953.155. COMPANY RECORDS. (a) A company shall  
4 maintain accurate accounts, books, and other records regarding  
5 transactions regulated under this chapter. The company's records  
6 must include:

7 (1) a copy of each unique form of legal service  
8 contract filed with the executive director under Section 953.156;

9 (2) the name and address of each legal service  
10 contract holder;

11 (3) a list of the sales representatives authorized by  
12 the company to market, sell, or offer to sell the company's legal  
13 service contracts;

14 (4) a copy of each contract entered into between the  
15 company and a contracting attorney; and

16 (5) a list of complaints the company has received from  
17 legal service contract holders, including the name of the sales  
18 representative involved in the transaction leading to the  
19 complaint.

20 (b) The records required by this section may be maintained  
21 in an electronic medium or through other recordkeeping technology.  
22 If a record is not in a hard copy, the company must be able to  
23 reformat the record into a legible hard copy at the request of the  
24 executive director.

25 (c) Except as provided by Subsection (d), a company shall  
26 retain the records required by this section until at least the  
27 second anniversary of the termination date of the specified period

1 of coverage under the legal service contract.

2 (d) A company that discontinues business in this state shall  
3 retain its records until the company furnishes the executive  
4 director with proof satisfactory to the executive director that the  
5 company has discharged all obligations to legal service contract  
6 holders in this state.

7 Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED  
8 DISCLOSURES. (a) A legal service contract must be filed with the  
9 executive director before it is marketed, sold, offered for sale,  
10 administered, or issued in this state. Any subsequent endorsement  
11 or attachment to the contract must also be filed with the executive  
12 director before the endorsement or attachment is delivered to legal  
13 service contract holders.

14 (b) A legal service contract marketed, sold, offered for  
15 sale, administered, or issued in this state must:

16 (1) be written, printed, or typed in clear,  
17 understandable language that is easy to read;

18 (2) include the name and full address of the company;

19 (3) include the purchase price of the contract and the  
20 terms under which the contract is sold;

21 (4) include the terms and restrictions governing  
22 cancellation of the contract by the company or the legal service  
23 contract holder;

24 (5) identify:

25 (A) any administrator, if the administrator is  
26 not the company;

27 (B) the sales representative; and

1                    (C) the name of the legal service contract  
2 holder;

3                    (6) include the amount of any deductible or copayment;

4                    (7) specify the legal services and other benefits to  
5 be provided under the contract, and any limitation, exception, or  
6 exclusion;

7                    (8) specify the legal services, if any, for which the  
8 company will provide reimbursement and the amount of that  
9 reimbursement;

10                   (9) specify any restriction governing the  
11 transferability of the contract or the assignment of benefits;

12                   (10) include the duties of the legal service contract  
13 holder;

14                   (11) include the contact information for the  
15 department, including the department's toll-free number and  
16 electronic mail address, as well as a statement that the department  
17 regulates the company and the company's sales representatives;

18                   (12) explain the method to be used in resolving the  
19 legal service contract holder's complaints and grievances;

20                   (13) explain how legal services may be obtained under  
21 the legal service contract;

22                   (14) include a provision stating that no change in the  
23 contract is valid until the change has been approved by an executive  
24 officer of the company and unless the approval is endorsed or  
25 attached to the contract;

26                   (15) include any eligibility and effective date  
27 requirements, including a definition of eligible dependents and the

effective date of their coverage;

(16) include the conditions under which coverage will terminate;

(17) explain any subrogation arrangements;

(18) contain a payment provision that provides for a grace period of at least 31 days;

(19) include conditions under which contract rates may be modified; and

(20) include any other items required by the executive director as determined by rule.

Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A legal service contract holder may terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a legal service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void.

(b) A legal service contract holder may void the legal service contract at a later time as provided by the contract.

(c) If a legal service contract is voided, the company shall refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the

contract. If the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. The monthly penalty may not exceed 10 percent of the amount outstanding.

(d) The right to void a legal service contract is not transferable.

Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A company may cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. The company must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The company is not required to provide prior notice of cancellation if the legal service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) a material misrepresentation by the legal service contract holder to the company;
- (3) a substantial breach of a duty by the legal service contract holder; or
- (4) cancellation of the contract by the legal service contract holder.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company may not use a name that:

1           (1) includes "insurance," "casualty," "surety," or  
2 "mutual" or any other word descriptive of the insurance, casualty,  
3 or surety business; or

4           (2) is deceptively similar to the name or description  
5 of an insurance or surety corporation or to the name of any other  
6 company.

7           (b) This section does not apply to a company that, before  
8 September 1, 2003, included a word prohibited under this section in  
9 its name. A company described by this subsection must include in  
10 each legal service contract a statement substantially similar to  
11 the following: "This agreement is not an insurance contract."

12           Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,  
13 a sales representative, or a representative of a sales  
14 representative may not, in the company's contracts or marketing:

15           (1) make, permit, or cause to be made any false or  
16 misleading statement; or

17           (2) deliberately omit a material statement if the  
18 omission would be considered misleading.

19           Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF  
20 ADMINISTRATOR. (a) A company may appoint an administrator or  
21 designate a person to be responsible for:

22           (1) all or any part of the administration or sale of  
23 legal service contracts; and

24           (2) compliance with this chapter.

25           (b) The executive director may adopt rules regarding the  
26 registration of an administrator with the department.

27           [Sections 953.163-953.200 reserved for expansion]

SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 953.201. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the executive director may impose an administrative sanction, including any administrative penalty, as provided by Chapter 51.

Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The executive director may issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public.

(b) The executive director may issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances.

(c) The executive director shall set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The executive director may institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352.

Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.



1       Sec. 953.205. APPEAL. A person affected by a ruling, order,  
2 decision, or other action of the executive director or department  
3 may appeal by filing a petition in a district court in Travis  
4 County.

5       SECTION 2. Article 5.13-1, Insurance Code, is amended by  
6 adding Subsection (h) to read as follows:

7       (h) An insurer may not issue or renew a prepaid legal  
8 service contract under this article after March 1, 2004.

9       SECTION 3. Subsection (b), Section 951.003, Occupations  
10 Code, is amended to read as follows:

11       (b) A law pertaining to legal service contracts under  
12 Chapter 953 or insurance does not apply to a program under this  
13 chapter.

14       SECTION 4. (a) Chapter 953, Occupations Code, as added by  
15 this Act, applies only to:

16               (1) a legal service contract entered into on or after  
17 March 1, 2004; or

18               (2) a legal service contract entered into before March  
19 1, 2004, that meets the requirements of Subsection (c) of this  
20 section.

21       (b) A person regulated under Chapter 953, Occupations Code,  
22 as added by this Act, is not required to comply with that chapter  
23 until March 1, 2004, but may implement the requirements of that  
24 chapter before March 1, 2004. The failure of a legal service  
25 contract company or other person to comply with Chapter 953,  
26 Occupations Code, as added by this Act, or otherwise to administer a  
27 legal service contract plan in the manner required by that chapter

1 before March 1, 2004, is not admissible in any court, arbitration,  
2 or alternative dispute resolution proceeding and may not otherwise  
3 be used to prove that the action of any person or the affected legal  
4 service contract was unlawful or otherwise improper.

5 (c) The Texas Department of Licensing and Regulation and the  
6 Texas Department of Insurance may enter into a memorandum of  
7 understanding for a transition plan to transfer the regulation of  
8 legal service contracts from the Texas Department of Insurance to  
9 the Texas Department of Licensing and Regulation. The transition  
10 plan at a minimum shall:

11 (1) allow persons licensed under Chapter 21, Insurance  
12 Code, who have not registered with the Texas Department of  
13 Licensing and Regulation to continue to sell legal service  
14 contracts regulated by the Texas Department of Licensing and  
15 Regulation until March 1, 2004; and

16 (2) allow a prepaid legal service contract issued  
17 subject to Article 5.13-1, Insurance Code, to be maintained by the  
18 legal service contract holder if:

19 (A) the insurer that issued the contract or a  
20 related entity is registered with the Texas Department of Licensing  
21 and Regulation under Chapter 953, Occupations Code, as added by  
22 this Act, not later than March 1, 2004;

23 (B) the legal service contract complies with the  
24 requirements established by Chapter 953, Occupations Code, as added  
25 by this Act, for a legal service contract; and

26 (C) any addition or deletion to the contract made  
27 by a legal service contract company registered with the Texas

S.B. No. 597

1 Department of Licensing and Regulation is approved by the company  
2 and the approval is endorsed or attached to the contract.

3 SECTION 5. This Act takes effect September 1, 2003.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 597 passed the Senate on March 26, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 29, 2003, by a viva-voce vote.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 597 passed the House, with amendments, on May 25, 2003, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**May 27, 2003**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties. ), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from GENERAL REVENUE FUND 1	Probable Savings/ (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain/(Loss) from DEPT INS OPERATING ACCT 36	Probable Savings/ (Cost) from DEPT INS OPERATING ACCT 36
2004	(\$63,188)	\$63,188	(\$6,597)	\$6,597
2005	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2006	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2007	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

Fiscal Year	Change in Number of State Employees from FY 2003
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Department of Insurance (TDI) to the Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

## **Methodology**

The Department of Insurance (TDI) indicates the transfer would reduce its number of licensees by 1,250. Because the agency contracts with an outside vendor for examination and processing of these licensees, with exam fees being paid directly to the vendor, the agency would not see a reduction in full time equivalent positions. However, the agency would see a reduction in the number of criminal background checks it is required to perform. This reduction would save TDI \$6,597 each fiscal year. The agency anticipates a \$271,680 loss to General Revenue Dedicated Fund 36 because of a reduction in fee revenue. It is assumed any revenue loss from fees collected that is not matched by a corresponding savings to TDI would be offset by an increase in the Insurance Maintenance Tax.

The Department of Licensing and Regulation (TDLR) would need 1.5 additional FTEs to administer the program. Of this, 0.75 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for application processing, and 0.25 FTE for an Administrative Technician III (\$25,932 annual salary) would be needed for customer service. Also, 0.5 Administrative Technician IV (\$29,232 annual salary) would be needed to review financial security requirements during the initial application process and at registration renewal, and to review registrants' business records to ensure compliance. TDLR's total cost associated with these FTEs would be \$63,188 in fiscal year 2004 and \$54,338 in each ensuing fiscal year.

It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

The Texas Department of Licensing and Regulation would require \$3,450 in fiscal year 2004 for computer equipment for new employees.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 454 Department of Insurance

**LBB Staff:** JK, JRO, RR, RT, RB, DLBe

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**May 6, 2003**

**TO:** Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: SB597** by Duncan (relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties. ), **Committee Report 2nd House, As Amended**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, Committee Report 2nd House, As Amended: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain/(Loss) from GENERAL REVENUE FUND 1</b>	<b>Probable Savings/ (Cost) from GENERAL REVENUE FUND 1</b>	<b>Probable Revenue Gain/(Loss) from DEPT INS OPERATING ACCT 36</b>	<b>Probable Savings/ (Cost) from DEPT INS OPERATING ACCT 36</b>
2004	(\$63,188)	\$63,188	(\$6,597)	\$6,597
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2007	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2003</b>
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5

## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Department of Insurance (TDI) to the Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

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No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 454 Department of Insurance

**LBB Staff:** JK, JRO, RR, RT, RB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

Revision 1

March 11, 2003

TO: Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
2004	(\$63,188)	\$63,188	(\$6,597)	\$6,597
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2007	(\$54,338)	\$54,338	(\$6,597)	\$6,597
2008	(\$54,338)	\$54,338	(\$6,597)	\$6,597

Fiscal Year	Change in Number of State Employees from FY 2003
2004	1.5
2005	1.5
2006	1.5
2007	1.5
2008	1.5



## **Fiscal Analysis**

The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

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## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 9, 2003

TO: Honorable Bill Ratliff, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB597** by Duncan (Relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB597, As Introduced: an impact of \$0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	\$0
2005	\$0
2006	\$0
2007	\$0
2008	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Savings/ (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain/(Loss) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36	Probable Savings/ (Cost) from <i>DEPT INS</i> <i>OPERATING ACCT</i> 36
2004	\$63,188	(\$63,188)	(\$6,597)	\$6,597
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Fiscal Year	Change in Number of State Employees from FY 2003
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The bill would transfer regulation of companies that provide for-profit legal service contracts from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR). It would exempt the transaction of certain for-profit prepaid legal service contracts from the Insurance Code and other laws of the state regarding the business of insurance. The bill would require TDI and TDLR to enter into a memorandum of understanding for a transition plan to transfer this registration program.

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It is assumed TDLR would adjust fees to offset any costs associated with implementing the provisions of the bill.

## **Technology**

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## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office Of The Attorney General, 452 Department Of Licensing And Regulation, 454 Department Of Insurance

**LBB Staff:** JK, RR, RT, RB

\_\_\_\_\_  
President of the Senate\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 597 passed the Senate on March 26, 2003, by a viva-voce vote ~~by the following~~  
~~vote: Yeas \_\_\_\_\_, Nays \_\_\_\_\_~~; and that the Senate concurred in  
House amendment<sup>s</sup> on May 29, 2003, by a viva-voce vote. ~~by~~  
~~the following vote: Yeas \_\_\_\_\_, Nays \_\_\_\_\_~~

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 597 passed the House, with  
amendment<sup>s</sup> on May 25, 2003, by a non-record vote. ~~by the~~  
~~following vote: Yeas \_\_\_\_\_, Nays \_\_\_\_\_, one present not voting~~

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date\_\_\_\_\_  
Governor

S.B. No. 597

By Robert Haney

A BILL TO BE ENTITLED

AN ACT:

relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

FEB 19 2003 Filed with the Secretary of the Senate  
FEB 25 2003 Read and referred to Committee on STATE AFFAIRS  
Reported favorably \_\_\_\_\_  
MAR 12 2003 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.  
Ordered not printed  
Laid before the Senate  
MAR 26 2003 Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays  
MAR 26 2003 Read second time, \_\_\_\_\_, and ordered engrossed by: { unanimous consent  
a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays  
MAR 26 2003 Senate and Constitutional 3 Day Rule suspended by a vote of 27 yeas, 3 nays.  
MAR 26 2003 Read third time, \_\_\_\_\_, and passed by: { A viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Latey Spaw  
SECRETARY OF THE SENATE

OTHER ACTION:

MAY 19 2003 -

Motion to postpone further consideration of SB 597 Thursday May 22 2003 at 1:00pm prevailed by a non-record vote.

March 26, 2003 Engrossed  
March 26, 2003 Sent to House

MAY 25 2003

Motion to reconsider the vote by which the bill finally passed prevails by a non-record vote.

Engrossing Clerk Mandi Alfano  
MAR 26 2003

MAY 25 2003 Read third time, amended, finally passed by a non-record vote.

MAR 27 2003

Received from the Senate

Read first time and referred to Committee on Licensing & Administrative Procedures

MAY 01 2003

Reported \_\_\_\_\_ favorably (as amended) \_\_\_\_\_

MAY 11 2003

Sent to Committee on (Calendars) \_\_\_\_\_

MAY 23 2003

Read second time (~~amended~~) (amended); passed to third reading (~~failed~~) by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting.

MAY 24 2003

Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

MAY 26 2003

Returned to Senate.

Robert Haney  
CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

MAY 26 2003

Returned from House with 2 amendments.

MAY 29 2003

Concurred in House amendments by a viva voce vote \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

\_\_\_\_\_ Senate conferees instructed.

\_\_\_\_\_ Senate conferees appointed: \_\_\_\_\_, Chairman; \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

\_\_\_\_\_ House granted Senate request. House conferees appointed: \_\_\_\_\_, Chairman;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Conference Committee Report read and filed with the Secretary of the Senate.

\_\_\_\_\_ Conference Committee Report adopted on the part of the House by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

**OTHER ACTION:**

\_\_\_\_\_ Recommitted to Conference Committee

\_\_\_\_\_ Conferees discharged.

\_\_\_\_\_ Conference Committee Report failed of adoption by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

03 MAY 10 PM 1:48  
HOUSE RECORDS MANAGER